

# DEVELOPMENT AND WORKING OF THE INDIAN CONSTITUTION

*By*

RAJ NARAIN GUPTA, M.A. (POL.) M.A. (ECON.) LL. B.

AND

DR. RAMESH NARAIN MATHUR, M. A. Ph. D.



**KITAB MAHAL**

ALLAHABAD ♦ BOMBAY ♦ DELHI





Handwritten notes at the top of the page, including "55" and "100".

6572

G. 93.5

59

PRINTED AT THE ANUPAM PRESS, 17, ZERO ROAD, ALLAHABAD  
AND PUBLISHED BY KITAB MAHAL, 56-A, ZERO ROAD,  
ALLAHABAD.

## PREFACE

As is clear from the title of the book, an attempt has been made in the present volume to deal with the development and working of the Indian Constitution. The history of the evolution of our constitutional machinery from the time of the establishment of the East India Company in 1600 to the enactment of the Indian Independence Act in 1947, and later, the formulation of our independent Republican Constitution by the Constituent Assembly, constitutes most fascinating theme of study for students of political science and constitutional history. Added to this a study into the working of our new Constitution and the practical functioning of the biggest parliamentary democracy in the world has not only something of the grand and the dramatic in it, but also a vital significance for the future of democracy.

To our knowledge, there is no such work yet published, which gives a historical, synthetic and systematic account of the evolution of the Indian Constitution as influenced by the developing forces of Indian nationalism, and an exposition and evaluation of the working of her new Constitution in its various aspects. The present work is an humble attempt in this direction. It gives a composite picture of the complex and variegated process of the rise of Indian nationalism, its impact on the evolution of our constitutional machinery, and an insight into the functioning of our new Constitution.

The present Constitution of India came into force on January 26, 1950. During the brief period of its working, we have had two general elections in which the Congress emerged as the ruling party both at the Centre and in the States. Only for a brief period in 1952-53 did a non-Congress Ministry function in the former PEPSU State, and, at present, Communist Ministry holds the reins of administration in Kerala. Based on this limited experience, it is rather difficult to pronounce judgment on the success or otherwise of that part of our Constitution which concerns the relationship between the Centre and the States. In so far as the other aspects of the Constitution are concerned, particularly



the provisions relating to fundamental rights, the relationship between the legislature and the executive, the position of the Governors and the President, the place of the judiciary in the Constitution, etc., enough material is available and the same has been given at appropriate places in the volume under reference.

The book is divided into two parts. Part I deals with the evolution of the Indian Constitution in the context of the national movement, and Part II deals with the exposition and working of the present Constitution, including the working of political parties. The book is primarily intended for students of Graduate and post-Graduate classes in Political Science, though the general reader interested in the working of our Constitution will also find it quite interesting and informative. Care has been taken to utilize only original sources in the preparation of the book, even when all contemporary works on the subject have been consulted. A list of books referred to in the preparation of each chapter has been given at the end under the title 'Select Bibliography.' A special feature of Part II is the comparison of the provisions of the Indian Constitution with similar provisions in other constitutions of the world. Simple language has been used in the exposition of the subject.

We shall be grateful for any constructive suggestions and criticisms from students and teachers of Political Science which will enable us to make the second edition more useful.

DELHI

*3rd October, 1958*

RAJ NARAIN GUPTA  
RAMESH NARIN MATHUR

## CONTENTS

VOLUME I

## CONSTITUTIONAL DEVELOPMENT

1.	Introduction : Growth of the Indian Constitution	I
2.	India under the East India Company	19
3.	India under the Crown	48
4.	Towards Responsible Government I	63
5.	" " II	80
6.	Provincial Autonomy in Action	111
7.	Provincial Legislatures and Political Parties	124
8.	Central Government in India	136
9.	Home Government of India	142
10.	Local Self-Government	155
11.	Public Services	163
12.	Public Finance	174
13.	India's March to Freedom	182
	(a) War and Constitutional Crisis	
	(b) Partition and Independence	

## VOLUME II

## THE PRESENT CONSTITUTION OF INDIA

THE PRESENT CONSTITUTION OF INDIA		(227)
14.	The Constituent Assembly and its Work	236
15.	Amendments to the Constitution	245
16.	Integration and Reorganisation of Indian States	267
17.	<u>Salient Features of the New Constitution</u>	282
18.	<u>Citizenship, Fundamental Rights and Directive Principles of State Policy</u>	304
19.	<u>The President of the Indian Union</u>	323
20.	<u>The Union Council of Ministers</u>	338
21.	<u>The Parliament : Its Organisation and Functions</u>	353
22.	The Parliament at Work	370
23.	State Governments	388
24.	<u>The Union Judiciary and High Courts in States</u>	401
25.	The Services under the Union and the States	424
26.	Public Finance under the New Constitution	433
27.	Miscellaneous Subjects : National Emblem	447
28.	Elections and Election Procedure	452
29.	Political Parties in India	476
30.	Working and Evolution of the Constitution	492
	Appendix	



**VOLUME I**  
**CONSTITUTIONAL DEVELOPMENT**





## CHAPTER 1

### GROWTH OF THE INDIAN CONSTITUTION

The history of the evolution of the constitutional machinery in India is the history of the establishment, growth and final disappearance of British power from this great land. The present Constitution of our country is rooted in the past and to understand it a brief historical survey of India's constitutional development is necessary.

#### 1. INDIA UNDER THE EAST INDIA COMPANY

It was in the year 1600 that Queen Elizabeth granted a charter to a group of English merchants known as 'Company of London merchants' to carry on trade with the East. The British Company had no political ambitions at first. It just wanted to engage itself in trade. It built factories at important trading centres such as Surat (1608), Masulipattam (1616), Madras (1640) and Calcutta (1690). In the initial stages it had to face severe competition from the Dutch, the Portuguese and the French trading companies. But it crushed all of them and finally annihilated the French Company as a result of the Carnatic Wars.

The setting sun of the Moghul Empire proved very propitious to the British traders. Taking advantage of the political rivalries between petty princes and Nawabs of India, the East India Company set one ruling prince against another. It thus engaged itself in the most fascinating game of empire-building. Clive won the Battle of Plassey in 1757 and the Battle of Buxar in 1764. The latter was able to secure for the Company the right of 'Diwani' over Bengal, Bihar, and Orissa. Thus, the *de jure* authority of the Company was established in these territories. Technically this area still belonged to the Moghul Emperor but the Company enjoyed the right of revenue collection and administration. In 1765, the Nawab of Bengal, in return for an annual pension of Rs. 50 lakhs, handed over to the East India Company the power of Nizamat, *i. e.*, the authority to maintain order and peace in the province. Thus, the Company acquired



both *Diwani* (Revenue) and *Nizamat* (Administrative) powers over modern Bengal, Bihar and Orissa. Clive did not upset this system. He left the *Diwani* and the *Nizamat* undisturbed in the hands of the Nawab (Muhammad Raza Khan), appointed Francis Sykes, Resident at Murshidabad, as an overall in-charge to supervise the whole affair. This arrangement, known as double government, did not, however, function very well.\*

#### PARLIAMENTARY INTERVENTION IN INDIAN AFFAIRS

##### The Regulating Act, 1773

The rise of the power of the East India Company in Indian territories could not fail to arouse the interest of the British Parliament and the British public in its affairs, specially so, when stories of the misdeeds of the servants of the Company reached their ears. The British Parliament passed a series of Acts to regulate the affairs of the East India Company and set up a unified system of administration in India. The first of these Acts was known as the Regulating Act of 1773. Before the passage of this Act, the presidencies of Bengal, Madras and Bombay were independent of one another. They had direct dealings with the Court of Directors in England which was the supreme controlling authority over the Company's affairs. The Act subordinated the Presidencies of Bombay and Madras to the Presidency of Bengal. The Governor of Bengal became the Governor-General of all the Company's possessions in India. An Executive Council of four was constituted to assist him. The Governor-General had to consult the Executive Council and abide by the majority decision. A Supreme Court of Judicature consisting of a Chief Justice and four puisne Judges was also established to decide the cases of the Europeans and the Company's servants, and to approve the rules and regulations framed by the Governor-General-in-Council. Warren Hastings became the first Governor-General under the provisions of this Act.

---

\**Ilbert writes*: "Thus, a system of dual Government was established, under which the Company, assumed complete control over the revenues of the country, and full power of maintaining law and order through the agency of Courts of Law." (*The Government of India*, p. 38).



**Pitt's India Act, 1784**

The provisions of the Regulating Act were found to be unsatisfactory inasmuch as the powers of the Supreme Court, the Governor-General and his Executive Council were not clearly defined. The result was a constant friction among them. An amending Act passed in 1781 removed this defect partly by freeing the executive from the necessity of registering its regulations and ordinances with the Supreme Court and getting its due sanction. But it still left undecided the question of their respective jurisdictions. It was also felt that the East India Company was not discharging its affairs properly and that the British Parliament should exercise more effective control over Indian affairs, instead of leaving them into the hands of a commercial company. Pitt's India Act of 1784 sought to achieve these objects. It placed the supreme authority of Indian administration into the hands of the British Government through the agency of a Board of Control consisting of six Commissioners including the Secretary of State, the Chancellor of the Exchequer, and a President, who eventually became the Secretary of State for India. The Board of Directors of the Company was made subordinate to the Board of Control. The Act also constituted a special secret committee of three persons. It could send the orders of the Board of Control direct to the officers of the Company without communicating their contents to the Directors. The Act reduced the number of members of the Governor-General's Council as well as those of Bombay and Madras from four to three and gave the Governor-General and Governors a casting vote. It defined clearly the jurisdiction of the Supreme Court and increased the powers of the Governor-General over the other Presidencies.

**The Charter Acts of 1793, 1813 and 1833**

The Company's charter was renewed after every 20 years. On each such occasion the Parliament sought to tighten its control over Indian affairs. The Charter Act of 1793 granted a fresh lease of life to the Company for 20 years. The Governor-General and the Governors were given the power of overruling their Council. The Act also enhanced the control of the Governor-General over the two Presidencies.



The Charter Act of 1813 deprived the East India Company of its monopoly of trade in India except in tea and emphasised the sovereignty of the British Parliament over the affairs of the East India Company. It also authorized an annual expenditure of one lakh of rupees for the promotion of education and learning in India. ✓

The Charter Act of 1833 reorganised Indian administration on a new basis. It made the Company a purely political and administrative body and terminated its existence as a commercial concern. It centralised administration by vesting all authority in one centre. Bombay and Madras Presidencies were deprived of their independent power of law-making. The Governor-General-in-Council became the sole legislative source for the whole of India. The Governor-General's Executive Council was enlarged with the addition of a fourth law member, without the right of vote. Under his presidentship a Law Commission was appointed to revise and frame laws for the whole of India. The Act also laid down that 'fitness is henceforth to be the criterion of eligibility' and that no native of India should by reason of his religion, place of birth, descent or colour be disqualified from holding any office under the Company. /

#### **The Charter Act of 1853**

The Act of 1853 paved the way for the final surrender of power from the hands of the East India Company to the British Parliament. The Act did not renew the charter of the Company for another 20 years but merely said, 'the company will function, until Parliament otherwise provides'. It reduced the number of Directors from 24 to 18, six out of whom were to be nominees of the British Government. It took away from the Directors their right of patronage by instituting for the first time the covenanted civil service based on an open competitive examination. The Act for the first time differentiated between the legislative and executive functions of the Governor-General's Executive Council. So far, both these functions were performed by the same Council. It now created a legislature for British India comprising 12 members: the Governor-General, the Commander-in-chief, four members of the Executive Council, one mem-



ber from each Presidency, the Chief Justice of Bengal, and a puisne Judge of the Supreme Court of Bengal. The law member became a full member of the Council.

### **The Act of 1858**

The people and the princes of India were by now completely sick of the Company's rule. This dissatisfaction found expression in the great rebellion of 1857 which is described by the British as the Sepoy Mutiny. This rebellion sealed the fate of the Company for all time to come, as the entire responsibility for its outbreak was placed on the corrupt administration of the Company. The British Parliament by passing an Act in 1858 formally took over the Government of India under its direct authority. The Act declared that India was to be governed directly by and in the name of the Crown, acting through a Secretary of State who was to exercise all powers hitherto exercised by the Court of Directors or the Board of Control. The Secretary of State for India was to be a member of the British Parliament and a Minister of Cabinet rank and was to be assisted by a Council of 15 members. The Council was merely an advisory body and the Secretary of State was not bound to consult it, except in matters relating to expenditure of Indian revenues and Imperial services, in which case their advice was binding on him. The Secretary of State every year sent a large number of despatches without the knowledge of the Council. He had, however, to submit before the Parliament each year an audited statement of the revenues and expenditure of India and a report about the moral and material progress of the country during that year.

## **II. INDIA UNDER THE CROWN**

The passing of the Act of 1858 marked the end of one epoch and the commencement of another in the constitutional history of India. During the latter period there was growth of political consciousness in the people, who started demanding the transfer of power into Indian hands. The British Government responded to this demand only partially and in bits. It passed a series of Acts beginning with the Councils Act of 1861, to the Indian Independence Act of 1947, and thus gradually led the people on to the road of



self-government.<sup>1</sup> It should not be understood that the original intention of the British Parliament was to establish responsible Government in India. Perhaps it would be more correct to say that the pace of events compelled the British to relinquish power and to concede the demand for Indian independence.

#### **The Indian Councils Act of 1861**

It was held by many enlightened persons that the main cause of the outbreak of the 1857 rebellion was the lack of contact between rulers and ruled. The question of giving representation to Indians in the legislature of the country was, therefore, raised in British Parliament at the time of the passing of the Act of 1858. The memory of the revolt being too recent then, the proposal was not accepted. The move was revived in 1861 and in that year for the first time a few Indians were associated with the work of legislation.\* The 1861 Act provided that the Governor-General's Council for the purpose of legislation should be reinforced by the addition of not more than 12 and less than six members to be nominated by the Governor-General for a term of two years, one-half of the additional members being non-officials. The powers of the council, were, however, limited only to the field of legislation. It was not allowed to put questions or deliberate on questions of policy.

Again, the Act restored legislative authority to the Governments of Madras and Bombay, and thus reversed the unhealthy tendency of centralisation in legislative affairs.

#### **The Indian Councils Act of 1892**

The Act of 1861 established legislatures which were only 'committees for the purpose of making laws' committees by means of which the Executive Government obtained advice and assistance in legislation. This system failed to satisfy the national aspirations of educated Indians. During the seventies and eighties of the last century many significant changes took place in the political life of India. English-educated Indians had been deeply influenced by the liberal political thought of the 19th century, and especially by the

---

\**Sir Charles Wood* considered that such a step would 'tend to conciliate to our rule the minds of the natives of high rank'.



nationalist movements in Italy and Germany. They were very much depressed by the humiliating conditions prevailing in their own country. Indians were not given any voice in administration and were treated as inferiors in their own country. The discontented people organized themselves in a number of associations. The Indian National Congress was established in 1885. The Congress made a demand for representation of Indians in legislatures and the services. The Indian Councils Act of 1892 was influenced by this demand. The Act provided for expansion of the Imperial as well as the Provincial Councils by increasing the number of additional members. In accordance with this Act, the Governor-General's Legislative Council was to consist of not less than 10 and not more than 16 nominated members, at least 10 of whom were to be non-officials. The Madras and Bombay Councils were to consist of 20 members each, the U. P. Legislative Council of 15 and the Punjab and Burma Councils of nine members each. The rules framed under the Act provided for the election of some of the additional members by local bodies like Municipalities and District Boards. Thus, the principle of election was indirectly introduced. The Act also increased the functions of the Councils. They could discuss the annual financial statement but were not given the authority to pass a resolution or divide the House in respect of financial discussions. The members were also permitted to put questions to the Government within prescribed limits, but could ask no supplementaries.

The Act of 1892 did not satisfy the nationalist aspirations of the people. There was an insistent demand for the reform of the Legislative Councils and for partial Indianisation of the Executive. Meanwhile several other factors intensified popular discontent. The bureaucratic administration of Lord Curzon further inflamed the feelings of the people. The Partition of Bengal generated a wave of seething revolt. Extremists in the Congress gathered strength. There were demonstrations, meetings and a call for non-co-operation with the Government. The British authority reacted to this policy in a dual manner. On the one hand, it resorted to a policy of stern repression of the extremists



and, on the other, it introduced the Morley-Minto Reforms to placate the liberals. ✓

### **The Morley-Minto Reforms (1909)**

These reforms represented 'the highest water-mark of the system of benevolent despotism that prevailed in the country.\* They involved no radical change of policy but only increased further the representation of Indians in the Central and Provincial Legislative Councils. In the centre, the membership strength was raised to 60 and in the major provinces of Bombay, Bengal and Madras to 50, and in the rest of the Provinces to 30. At the centre, out of 60 members, 33 were to be nominated and 27 elected. Of the nominated members 28 were officials and five non-officials. The system of election was indirect. The members were elected for three years on the basis of communal representation. Provincial legislatures were given a non-official majority. The powers and functions of the Councils were enlarged. Members could ask supplementary questions as also move resolutions. The budget was allowed to be debated and resolutions regarding appropriation could be moved. For the first time, Indians were appointed to the Executive Councils of the Governor-General and the provincial Governors as well as to the Council of the Secretary of State.

Thus, the Minto-Morley Reforms introduced a measure of representative government in India. It was not, however, in any sense a responsible government. The reforms introduced for the first time the extremely vicious system of communal electorates. This widened the gulf between the two sister communities of India and proved to be the precursor of Pakistan.

### **III. THE ROAD TO PARLIAMENTARY GOVERNMENT**

#### **The First World War (1914-18) and the Montford Reforms**

The outbreak of the First World War was a great turning point in Indian constitutional development. The British people had declared that their Government was fighting for democracy and freedom. Indians who helped substantially in the war effort wanted the application of these principles

\*Sri Ram Sharma, "How India is Governed," p. 7.



to themselves. As the British did not respond to this gesture, Mrs. Annie Besant and Lokmanya Tilak intensified the agitation for self-government. The British Government tried to suppress this agitation but to secure active co-operation of the liberals in the war effort announced on August 20, 1917, that the goal of British policy in India was the "progressive realization of responsible government".

Mr. Montague, Secretary of State for India, came to India in the winter of 1917 and along with Lord Chelmsford toured the country. Both of them held consultations with the Government of India and with leaders of public opinion and submitted a joint report which became the basis of the Government of India Act, 1919. The Act opened up a new chapter in the constitutional history of India. For the first time it introduced a measure of responsible government in the provincial sphere, though it left the centre as irresponsible as before.

### The 1919 Act

The Act made the salary of the Secretary of State for India and the cost of his office a charge on the British revenues. So far these expenses were paid out of the Indian revenues. The number of members in the Secretary of State for India Council was fixed between eight and 12. His powers with regard to superintendence, direction and control of Indian affairs remained unaltered, but he was given the power to devolve his authority to Provincial and Central Governments. The control of the Central Government was vested in the Governor-General-in-Council which was responsible not to the Central legislature but to the British Parliament. A bi-cameral legislature was introduced in the centre: the Upper House was named the Council of State and the Lower House the Legislative Assembly. The former was to consist of 60 members, 33 elected and 27 nominated, including not more than 20 officials. The latter was to consist of 145 members, 104 elected and 41 nominated, including not more than 26 officials. The powers of the legislature were increased. It could pass legislation under certain conditions, could move resolutions and adjournment motions and could vote a part of the budget. The Governor-General had the



power of veto over the decisions of the legislature. The term of the Legislative Assembly was fixed at three years and that of the Council of State at five years.

The Act increased the number of members of the Governor-General's Executive Council to eight, including three Indians. Of the eight members of the Council, one was Governor-General, one Commander-in-Chief, one Law Member, one Finance Member, one Commerce Member, one Communications Member and one Member for Education, Land, Health and Records. The Governor-General was given power to override his council in extraordinary cases. The Act also introduced 'dyarchy' in the provinces, *i. e.*, the provincial administration was divided into two halves known as 'Reserved' and 'Transferred.' The former was administered by the Governor and his Executive Councillors, responsible to the British Parliament, and the latter by the ministers responsible to the legislative council of the province. The Reserved subjects comprised law and order, revenue, justice, jails, irrigation, forests, etc. The Transferred subjects included co-operation, education, agriculture, industries, public health, local self-government, etc. The Executive Councillors were appointed by the Crown for five years, while the ministers could only be from among the elected members of the legislature.

The provincial legislative councils functioned for three years. Of their total strength, 70 per cent members were elected and not more than 20 per cent could be nominated officials. The Governor held supreme authority in the province, because he could overrule the decisions of the ministers and the Executive Councillors.

The Act also increased the powers of the local bodies and extended their franchise.

#### **The Working of the 1919 Act**

The system of dyarchy failed as it violated the unity of government. The Governors did not act as constitutional heads and overruled the decisions of the ministers. There was no co-operation between the two halves of the Government. Owing to the absence of organized political parties in the legislature, the ministers had no solid support and



therefore, they kept themselves in power through the support of the official bloc and the Governor. "Dyarchy failed to achieve its object, except to a limited extent. The evidence to prove this is that the ministers did not consider the confidence of an elected majority in the legislature necessary for their continuance in office.....In spite of the defeat of ministers, year after year, they continued in office. In the United Provinces during three out of seven years, 1920 to 1927, the ministers could not have continued in office without the support of the official block. The same story is generally true of the state of things in Madras, Bihar, Orissa and Bengal."\*

### The Rowlatt Act and the Jallianwala Bagh Tragedy

The Act of 1919 caused a great deal of disappointment among nationalist circles. The resentment and bitterness grew with the passage of the infamous Rowlatt Act. It was passed at the end of 1917 to deal with the revolutionary movement in the country. Its provisions were so drastic that even ordinary citizens felt their freedom seriously menaced. The Muslims at this time were greatly perturbed over the Khilafat question. Mahatma Gandhi launched a civil disobedience movement against the Rowlatt Act. In the meantime a grave situation developed in the Punjab. At Amritsar General Dyer ordered his troops to fire at a heavily attended peaceful meeting of the citizens in Jallianwala Bagh. In this firing hundreds of people were killed. Later, Martial Law was clamped down on the whole of the Punjab.

As a protest against this and similar happenings in other parts of India, Mahatma Gandhi launched a satyagrah movement on a nationwide scale in 1920. The Muslims joined this movement in large numbers as they were greatly agitated over the future of Turkey. Owing to a violent incident at Chauri Chaura, Mahatma Gandhi withdrew this movement in February, 1922, even though it was then at the height of its glory. Later, in 1924, a Swaraj party was organised in the country under the leadership of Shri C. R. Das and Pt. Moti Lal Nehru. This party decided to enter the Councils to wreck the Constitution. It contested elections, and captured the

\*A. Appodurai, "Dyarchy in Practice," pp. 367-368



majority of seats in several provinces, thus creating a deadlock on various occasions and making the functioning of government difficult. The Congress Party passed resolutions demanding Dominion status for India.

### **Simon Commission and the Round Table Conferences**

In 1927 the British Parliament appointed an all-white Commission under the chairmanship of Sir John Simon to make recommendations for the next instalment of constitutional advance in India. It was boycotted by all influential sections of the people. In 1929, the Labour Government which had returned to power, called a Round Table Conference in England to discuss the constitutional future of India. The first Round Table Conference was held in 1930. It agreed on the setting up of an all-India Federation composed of British Indian Provinces and the Indian States. The second Round Table Conference was attended by Mahatma Gandhi but it could not reach agreement on the communal question. Mr. Ramsay Macdonald, who headed the next National Government with a conservative majority, gave his famous 'Communal Award' on August 17, 1932. This award was modified by the Poona Pact in relation to the representation of depressed classes. After the third Round Table Conference and the 'Joint Parliamentary Committee Report', the Government of India Act of 1935 was passed.

### **The Government of India Act, 1935**

The Act provided for an all-India Federation consisting of the provinces and the States. It recommended partial responsibility at the centre and granted autonomy to the provinces. At the centre, it recommended the division of subjects, under two heads—Reserved and Transferred. The Reserved subjects, *i.e.*, Defence, External Affairs, Ecclesiastical Affairs and Tribal Areas, were to be administered by the Governor-General with the help of Councillors appointed by him and not responsible to the federal legislature. The Transferred subjects were to be administered by the Governor-General with the help of ministers responsible to the legislature. The Federal part of the scheme did not come into force, but the Federal Court as provided in the Act was established.



### **Working of Provincial Autonomy**

In February, 1937, the Congress contested elections and swept the polls in several provinces. It won a majority in six out of 11 provinces. The Congress refused to accept office unless it got an assurance from the Governors that they would not use their special powers of interference in regard to their constitutional activities. For six months the Governors formed 'stop-gap' or interim ministries. But in June, 1937, Lord Linlithgow made a speech clarifying the point, that except in extraordinary cases the Governors would not use their special powers. On the basis of this assurance, the Congress in July, 1937, agreed to accept offices in provinces where it was in a majority, *i. e.*, in Madras, Bombay, the United Provinces, Bihar, the Central Provinces and Orissa. Some time later, in coalition with other parties it also formed ministries in N. W. F. P. and Assam. Provincial autonomy worked with a fair measure of success in these provinces. Governors did not make use of their extraordinary powers and enabled the Ministers to push on with their programmes of tenancy legislation, agricultural development, mass literacy and prohibition. But in non-Congress provinces there were complaints of frequent gubernatorial interference.

### **The Second World War and the Constitutional Deadlock**

The Second World War broke out in August 1939 in Europe and India was dragged into it against the express wishes of her leaders. The Indian National Congress demanded of the British Government a clear declaration of its war aims and their intentions about their applicability to India. The British Government failed to respond to this demand. The Congress ministries in the eight provinces, therefore, resigned offices in November, 1939, leaving only the Punjab, Bengal and Sind Governments to function as before. The Governors declared a breakdown of the constitutional machinery in these provinces and under section 93 assumed to themselves all the powers of administration and legislation.

### **The Muslim Demand for Pakistan**

During the period the Congress was in office, the



Muslim League greatly resented its exclusion from the share of power. It, therefore, carried on a tearing campaign of vilification against the Congress. The bitterness reached its highest point at the Lahore session of the League in 1940. It then passed a resolution demanding the creation of a separate State for the Muslims to be known as 'Pakistan'.

#### **August Declaration, 1940**

In August, 1940, the Viceroy and the Secretary of State for India made an important declaration 'that the goal of British policy in India was the attainment of Dominion Status as soon, after the war, as possible. The responsibility for framing the new Constitution rested primarily on the people of India, subject to due fulfilment of obligations which Great Britain's long connections with India had imposed on her and for which His Majesty's Government cannot divest themselves of responsibility'. In 1941 the Governor-General's Executive Council was enlarged to include five Indian members in it.

#### **Cripps' Proposals**

These changes did not pacify the Congress. The entry of Japan into the war and the fall of Singapore constituted a real danger to India. The British Government sent Sir Stafford Cripps to India to negotiate with the Indian leaders and to secure their active co-operation in the war. On arrival, Mr. Cripps discussed his proposals with the members of the Governor-General's Executive Council and with the leaders of public opinion. The proposals suggested the establishment of a representative Constituent Assembly to frame the new Constitution of India and recognized the right of the provinces which did not accept the new Constitution to opt out of the proposed Dominion. In the interim period, the British Government was to shoulder the responsibility of the defence of India. These proposals were rejected by the Congress because they did not immediately concede the right of independence for India and completely ignored the existence of the ninety million people of the Indian States who were given no choice to select their representatives to the Constituent Assembly. This right was conceded to the rulers. Further, by accept-



ing the principle of non-accession for a province they paved the way for the disintegration of India. The Muslim League was quite prepared to accept the proposals because the Leaguers envisaged the possibility of the establishment of Pakistan; still they rejected them because they wanted a more categorical assurance.

### **Quit India Movement of 1942**

The failure of the Cripps Mission led to a further deterioration in the political situation in the country. In August, 1942, the Indian National Congress passed a resolution asking the British Government to quit India and declare it a free country forthwith. In answer, the Government resorted to a policy of ruthless repression and put all the Congress leaders behind prison bars. This infuriated the people who destroyed Government property, burnt Government offices and committed widespread acts of sabotage. The war for Indian independence thus went on with greater or less vigour during the next three years.

### **The Wavell Plan**

In 1945, Lord Wavell announced that the Cripps' proposals could still be revived and he offered a plan of reorganization of the Governor-General's Executive Council on the basis of parity between Caste Hindus and Muslims. He said, all the seats in the Council except those of the Viceroy and the Commander-in-Chief will be offered to Indians. A conference of Indian leaders was held in Simla but no agreement was reached on the proposal on account of differences between the Congress and the Muslim League.

### **The Cabinet Mission Plan, 1946**

Soon after this, a Labour Government came into power in England. It sent a Parliamentary Commission to India to study the political situation. When it returned and submitted its recommendations, a Cabinet Mission consisting of three British ministers, namely, Lord Pethic Lawrence, Sir Stafford Cripps and Mr. A. V. Alexandar, visited India to find out ways and means to resolve the Indian constitutional deadlock. The Mission published its proposals on May 16, 1946. It rejected the demand for Pakistan and pro-



posed instead the establishment of a Constituent Assembly to frame a three-tier constitution consisting of a Union Centre, three Groups of States and 11 individual Provinces. The Union of India was to have control over three subjects Defence, Foreign Affairs and Communications. The residuary powers were to vest in the Provinces. The Groups were to discuss and deliberate on matters of common interest. The Mission also proposed that an Interim Government be formed at the centre consisting of the leaders of the major political parties. The Congress consented to join such an Interim Government on September 2, 1946. The League at first did not join the Interim Government as it was offered only five seats in a Council of 14 members (6 to Congress and 3 to the minorities) but eventually it joined it in October, 1946. However, it still refused to co-operate in the Constitution-making body on the plea that the Congress had not accepted certain points of the Mission's proposals. The Congress protested that the League which did not participate in the Constituent Assembly had no right to enter the Interim Government. The work of the Government became difficult because of the differences between the League and the Congress.

#### **Announcement of February 20, 1947**

The deterioration of the political situation and the lack of co-operation between the League and the Congress in the working of the Government convinced the Labour Cabinet in England that it should make a new approach to solve the deadlock. It, therefore, made a historic announcement on February 20, 1947, to quit India by June, 1948. It hoped that, faced with immediate responsibility for the government of the country, the parties in India might perhaps compose their differences. The announcement added that "if an agreed constitution was not worked out by a fully representative body by the due date, His Majesty's Government would have to consider to whom the powers of the Central Government in British India should be handed over, whether as a whole to some form of Central Government or in some areas to the existing Provincial Governments or in some such other way as might seem most reasonable and in the best interests of the Indian people."



**June 3 plan**

Lord Mountbatten assumed charge as Viceroy and Governor-General of India on March 24, 1947. He proposed the division of India as the only practical solution of the Indian constitutional problem. The Punjab, Bengal and Assam were to be partitioned into Muslim majority and Hindu majority districts. It was to be ascertained whether the N. W. F. P. and the population of Sylhet District in Assam would join Pakistan or not. A Boundary Commission was to adjust the boundaries of the two Dominions. The plan was accepted both by the Congress and the Muslim League.

**The Indian Independence Act**

An agreement on the constitutional problem having been reached, a bill was introduced in the British Parliament providing for the creation of the two Independent Dominions of India and Pakistan on August 15, 1947. India was to comprise all territories included in British India before August 15, excepting territories included in Pakistan by this Act. The territories of Pakistan were to consist of East Bengal, West Punjab, and the North-West Frontier Province, if its people so decided by a referendum. The two Dominions were given freedom to withdraw from the Commonwealth. The Indian States were given the option of acceding to either of the Dominions provided their territories were contiguous. Each of the two Dominions was to have a Governor-General appointed by the Crown. The Constituent Assemblies of the two Dominions were to serve as their respective legislatures and they were invested with full legislative sovereignty.

**Framing of the New Constitution**

The Indian Constituent Assembly as constituted on December 8, 1946 consisted of 385 members, 292 from Provinces and the rest from Indian States. After the withdrawal of members from Pakistan, its strength was reduced to 308 members. It formed a Drafting Committee with Dr. B. R. Ambedkar as Chairman. Various sub-committees were formed to work out the different aspects of the Constitution. The Drafting Committee sat for 141 days for giving final



shape to the Constitution. It submitted its report to the President of the Constituent Assembly on February 21, 1948. The discussion on the draft followed thereafter. The final Constitution was adopted on November 26, 1949. Thus, the Constituent Assembly took about three years in framing and adopting the Constitution. The new Constitution came into force on January 26, 1950.

### Select Bibliography

- A. C. Bannerjee* : Indian Constitutional Documents, Vols. I, II, III.
- A. C. Bannerjee* : The Making of the Indian Constitution.
- Dr. B. R. Ambedkar* : Thoughts on Pakistan.
- Dr. Rajendra Prasad* : India Divided.
- Reginald Coupland* : The Indian Constitutional Problem and India—a Restatement.
- Dr. D. R. Gadgil* : Federating India and the Federal Problem in India.

## CHAPTER 2

# INDIA UNDER THE EAST INDIA COMPANY

### Establishment of the East India Company

In the previous chapter, we have given in brief a broad survey of the constitutional history of India. In this chapter, we propose to deal with the detailed history of the Company's rule in this country.

As pointed out before, the history of the development of the Indian Constitution can be traced back to the year 1600, when a company of British merchants formed themselves into a trading body and obtained a charter from Queen Elizabeth to trade with India and other parts of Asia and Africa. This company was attracted to India by the stories\* of fabulous wealth of the country. Under the terms of charter, the company of British merchants could acquire territory, fortify its factories, defend and protect its property, maintain troops, coin money and administer justice within its settlements. It also enjoyed sole monopoly of trade in the East for 15 years. In return it paid to the British Crown a portion of its profits.

### Growth of Power of the Company

This charter was made perpetual by James I in 1609. Gradually the company built up its position and power in the Indian territories. In the early stages, as discussed before, it was a purely trading body and had no political ambitions. It built up factories at different places. But towards the middle of the eighteenth century, it was attracted into the political arena by the decadence of the Moghul Empire. In 1757, the English inflicted a severe defeat on Sirajuddoula, Nawab of Bengal, and established their supremacy over his territory. The Marathas who were serious rivals of the British were crushed in 1761 in a disastrous defeat at the hands of Ahmad Shah Abdali at the battle of Panipat. This left the British complete masters of the situation and they could now pursue their plans of territorial expansion with-

---

\*G. N. Singh, *Landmarks*, p. 1.



out any let or hindrance. But Clive proceeded very cautiously. He did not annex any territory, lest he should arouse the hostility of all the native rulers.\* After defeating the combined forces of Shah Alam, the puppet Emperor of Delhi, Sirajuddoula, the Nawab of Oudh, and Mir Kasim, in 1764, at the battle of Buxar, he had established the company's *de facto* sovereignty over Bengal. He did not proceed to take over the administration of the territories of Bengal but instead tried out the experiment of a Double Government (1765-1772).

### The Double Government /

The system of administration employed by Clive in his newly-conquered territories is known as Double Government. The Nawab of Bengal originally acted as *Nazim* administering military and criminal justice and also as *Diwan* in charge of revenue collection and civil justice. The company after defeating the Nawab and Shah Alam had acquired in 1765 the right of *Diwani* which meant the right of the collection of land revenues and customs as also of civil government by virtue of gaining control over the Nizamat. It did not, however, exercise these rights in its own person, but instead left them in the hands of native servants. The Diwani and Nizamat were left in the hands of Nawab Muhammad Raza Khan, although his work was supervised by the Company's servant, Francis Sykes, Resident at Murshidabad. Clive insisted 'that while the Nawab was but a name and a shadow, policy required that he should be venerated and encouraged to show resentment at any lack of respect by foreign nations. His office should be used to repel any foreign efforts at control, and genuine grievances should be adjusted through him. While the revenues belonged to the company, the territorial jurisdiction must be exercised through the chief of the country. If the masks were thrown off, foreign powers would be able to be complain directly to the British Government, which in turn might hold an inquest into the affairs of the

\*Clive explained why he did not want to pursue a policy of annexation thus : "If ideas of conquest were to be the rule of our conduct, I foresee that we should, by necessity, be led from acquisition to acquisition until we had the whole empire in arms against us."—Sinha & Banerjee, *History of India*, p. 484.



company.\* With a great deal of embarrassment to her. Through this device of dual administration the company was able to retain power without responsibility. But this system of dual administration led to disastrous results and was abolished in 1772.

### Constitution of the London Company (1600-1772)

The London Company originally was a regulated company, and not a joint-stock company. In the words of Ilbert, "The members of such a company were subject to certain common regulations and were entitled to certain common privileges, but each of them traded on his separate capital, and there was no joint-stock".† Each voyage was a separate venture and contribution towards its funds was raised from those who subscribed to its voyage. It had nothing to do with a succeeding voyage. Profits of each voyage were distributed among merchants who financed the venture. In 1612, however, the subscribers threw their contributions into a joint stock, but this arrangement also had no permanent character. The company had a democratic constitution. Its members elected each year a Governor and 54 Committees. These enjoyed the power to direct the voyages of the Company and manage its affairs.

The London Company had to face a lot of difficulties in the beginning. Its rival, one Assada Company, inflicted great losses on it. Ultimately, a compromise was effected between the two Companies and they were merged in 1657.

The Charter of 1657 required the Company to have one joint stock. In the words of Hunter, "The London Company was thus transformed from a feeble relic of the medieval trade-guild into a vigorous forerunner of the modern joint-stock company." According to this Charter every one could become a member of the Company by paying an entrance fee of £5 and purchasing a share of at least £100. The voting rights by the members were, however, acquired only when they held shares of at least £500. Those who held the stock of £1,000 or more could be elected

\*Keith, cited in Ilbert's *Government of India*, pp. 54-55.

†Ilbert, *Government of India, Historical Survey*, p 7.



members of the committees. The terms of the Governor and the Deputy Governor were limited to two years.

### Charters of 1661 and 1668

Charles II issued a new charter in 1661, empowering the Company to send ships of war, men and ammunition for the security of its factories and authorising it to coin money and administer civil and criminal affairs within its jurisdiction. In 1668, he went further and transferred the control of the island of Bombay to the Company. He had earlier obtained this island from Portugal in dowry at an annual rent of £10 only.

### The Charter of 1693

The Charter of 1693 effected minor changes in the constitution of the Company. It provided that the Governor and the Deputy Governor must hold stocks of at least £4,000 and they should hold office for not more than two years. Any member's right to purchase stocks was limited to £10,000 and his right of vote to ten. About this time the Government of England felt the necessity of raising additional funds and it struck upon a novel idea. Mr. Montague, the then Chancellor of Exchequer, announced that the monopoly of trade in India would be granted to a company which could grant a loan of £2,00,000 to the Government at an interest of 8 per cent per annum. The London Company was unable to meet this demand but a new company called "General Society" came forward. The British Parliament in 1698 granted this company the right of trading in East India. The concurrent right of the London Company was to terminate at a notice of three years.

In order to strengthen its position, the London Company purchased shares worth £3,15,000 in the new company. There was, however, a constant tug of war between them. This proved ruinous to the new company. Ultimately, a compromise was arrived at between the two and they were both amalgamated in 1702. The old company was to surrender its charter at the end of seven years and the new company was to carry on trade under the new title of "The United Company of Merchants of England Trading to the East Indies". In 1709, the London Company sur-



rendered its charter to Queen Anne and a new Company under the shorter title of East India Company started its eventful and prosperous career.

### **Constitution of the New Company**

The constitution of the new company was similar to that of the old. The company's affairs at home were managed by two bodies, the Court of Proprietors and the Court of Directors, the latter exercising much greater authority than the former. The Court of Proprietors consisted of all persons holding shares of £500 or more. They elected each year from among themselves 24 members, each holding stocks of at least £2,000, as Directors of the Company.

In India the three important factories at Bombay, Madras and Calcutta came to be known as Presidencies. Each of them was ruled by a Council whose head was Governor. The number of councillors varied from nine to 12. The Charter of 1726 vested in the Governor and his Council power to make by-laws and ordinances for the several corporations and to punish wrong-doers. Appeals against the decisions of Mayor's courts, established in Madras, Bombay and Calcutta, under the provisions of the Charter Act, lay to the Governors-in-Council and then to the King-in-Council. The Charter of 1754 allowed the Company the right to exercise full control over the armed forces as well. It also provided for the setting up of a Court Martial for trying military offences. The Charter Acts of 1757 and 1758 allowed the Company to retain the territories acquired by it during different conflicts. By 1772 the East India Company was in secure possession of Bengal which proved to be the spring-board for the conquest of India, and by 1858 the whole of India passed under the sway of the Company.

### **IMPORTANT LANDMARKS IN THE COMPANY'S RULE (1773-1858)**

#### **Parliamentary Intervention in Company's Affairs**

For a long time the British Government had assumed no direct share in the administration of India. It had allowed the Board of Directors of the Company to administer its territories and affairs in the manner it deemed best. But the powers, authority and responsibilities of the Company were becoming so extensive that some control by Parlia-



ment seemed necessary. It is never safe and wise to combine the functions of a trader and a ruler unreservedly in the same hands, for a trader cares more for his profits than for good government. The so-called Double Government established by Clive brought utter ruin to the country. The Company treated India as a source of power and profit and felt no sense of obligation to the people for good administration. As the revenues of the Company increased on account of the income from the Diwani of Bengal, Bihar and Orissa, the shareholders of the Company demanded and got a dividend of  $12\frac{1}{2}$  per cent on their shares. The British Government also from 1767 onwards got an annual payment of £40,00,000 from the Company. The Company's servants also joined in this large-scale plunder and amassed large fortunes by engaging in loot and extortion. When they returned to England, they purchased big landed estates, and corrupted the politics of England with the help of their money. Clive himself was in possession of a *Jagir* valued at £600,000. The total value of presents received by the servants of the Company between 1757 and 1766 was estimated at £21,169,665. The sufferings of the people reached their climax in 1770-71 when, owing to failure of crops, a terrible famine visited India. In spite of this, the Company did not give any relief to the people. Meanwhile the Company was rapidly heading towards bankruptcy. Its income had dwindled and it was incurring heavy expenditure on the maintenance of a large standing army for its expensive wars with Hyder Ali. In August, 1772, the officers of the Company approached Lord North for financial assistance. The members of Parliament by this time had known of the stories of oppression and maladministration of the Company and thought it was a suitable opportunity for them to regulate the affairs of India by parliamentary enactment. Cornwallis Lewiss declared in Parliament that no civilized government existed on the face of this earth which was more corrupt, more perfidious and more rapacious than the government of the East India Company between 1765 and 1772. Still, the Parliament sanctioned a loan of £1,400,000 at 4 per cent interest to the Company, but passed a law in 1773 known as the Regulating Act for the better management of the East India Company.



### The Regulating Act of 1773

The passing of this Act constituted the greatest landmark in the constitutional history of India, inasmuch as it proclaimed for the first time the trusteeship of Great Britain for India with a view to better government of her people, and marked the beginning of direct interference by Parliament in Indian affairs. The main provisions of this Act were :—

(1) The Act created a double government in India. The commercial and financial matters of the Company were left in charge of a Board of 24 Directors, while the civil administration of the government was entrusted to the charge of the Governor-General of Bengal and four executive councillors nominated by the Crown. The Directors were to be elected for a term of four years, one-fourth of them being elected annually. Only those persons who held a stock of at least £1000 were entitled to vote in the election of the Directors. The latter were required to submit copies of letters received from the Governor-General-in-Council to the Treasury and the Secretary of State. The Governor-General of Bengal and the Governors of Bombay and Madras were asked to pay due obedience to the orders of the Directors and to keep them constantly informed of all matters affecting the interests of the Company.

(2) The Governor-General of Bengal was to work with the help of four councillors, all of whom were named in the Act and who were to hold office for five years and could only be removed by the King. After the first five years, the Court of Directors could make further appointments. Warren Hastings was made the first Governor-General of Bengal. The members of his executive council were : Clavering, George Monson, Richard Barwell and Phillip Francis. The decision of the majority of his council was made binding on the Governor-General.

(3) The Governor-General-in-Council was put in charge of the entire civil and military government of the country. The Governors of Bombay and Madras were made subordinate to him specially in matters of peace and war.

(4) A supreme Court of Judicature was established at



Fort William in Bengal. It consisted of a Chief Justice and four puisne Judges nominated by the Crown. It exercised jurisdiction in civil, criminal, admiralty and ecclesiastical matters. It could make its own rules of procedure. The Governor-General and the members of his council were exempted from its jurisdiction. The orders, rules and regulations issued by the Governor-General-in-Council could not be enforced until duly registered or approved by the Supreme Court.

(5) The Governor-General was to get an annual salary of £25,000; members of his council £10,000; Chief Justice £8,000, puisne Judges £6,000.

(6) The Act provided liberal salaries for the military and civil servants as well, but prohibited them from accepting illegal money on pain of being fined or imprisoned.

### Defects

The Regulating Act was not free from defects. Firstly it did not touch the administration of the Company at home where things went on as they were. It only revised the voting qualifications of Proprietors, and the terms under which the Directors were to hold office. The raising of the qualifications of voters, however, meant the disenfranchisement of 1246 small holders of stock and the transformation of the Court of Directors into a more or less permanent oligarchy.

Secondly, it did not clearly define the jurisdiction of the Governor-General-in-Council or of the Judges of the Supreme Court. During the entire tenure of his office, Warren Hastings had to face obstructionist opposition of the members of his Council. Again the Supreme Court claimed to have jurisdiction over the revenue collectors of the Company for wrongs done by them in the official discharge of their duties. Warren Hastings did not accept this position. The authors of the Montague-Chelmsford Report have aptly summed up this position in the following words :

The Regulating Act "created a Governor-General who was powerless before his council and an executive that was powerless before a Supreme Court."



Thirdly, another great defect of the Act was that it did not clearly state what law the Supreme Court was expected to administer? Was it to administer the personal law of the defendant or the English law in all cases? All the Judges were of the English race and they were ignorant of the traditions and customs of Indians. The result was that they applied English laws and procedures in Indian cases.

Fourthly, the Supreme Court did not recognize the jurisdiction of the provincial courts. It released revenue defaulters imprisoned by Provincial courts under writs of *habeas corpus*. This led to friction between the Provincial Courts and the Supreme Court. Warren Hastings tried to remove this conflict by appointing Sir Elijah Impey, judge of the Sadar Diwani Adalat, as Chief Justice, and vesting in him appellate and revisional powers over provincial courts. This proved unconstitutional, as the Chief Justice could not be vested with these powers.

Fifthly and lastly, the Act failed to unify the administration of the entire country, although it claimed to have done so in theory. The Governor-General of Bengal was no doubt addressed as Governor-General, but he had no strong control over the working of internal administration in the other provinces.

The whole position may be summed up as follows :

The Act had neither given the State a definite control over the company, nor the Directors a definite control over their servants, nor the Governor-General a definite control over his Council nor the Calcutta Presidency a definite control over Madras and Bombay.

### **Constitutional Importance**

In spite of these defects, the Regulating Act was of great constitutional importance. It was the first of a series of parliamentary enactments which subjected, to some degree, the control of Indian affairs in the hands of Parliament. For the first time, it recognised the political functions of the Company and asserted the authority of Parliament in exercising supervision and control over Indian affairs. In the words of Prof Keith, "The Act altered the constitution of the company at home, changed the structure



of the Company in India, subjected in some degree the whole of territories to some supreme control in India and provided in a very efficient manner for the supervision of the company by the ministry". The defects which revealed themselves were due to an imperfect mechanism. As Mr. Bouten Rouse explained in the House of Commons, "The object of the Act was good, but the system that it established was imperfect"\*

### **The Amending Act of 1781**

The Amending Act of 1781 tried to remove some of the defects of the Regulating Act. Its main provisions were :

(1) It exempted the public servants of the Company from the jurisdiction of the Supreme Court in matters arising out of the official discharge of their duties. The Governor-General and his Council, the revenue collectors and the judicial officers of the courts were similarly freed from the jurisdiction of the Supreme Court.

(2) It provided that the courts in trying individual cases should administer the personal law of the defendant and not the English law.

(3) It provided that the company would maintain a register giving the names and occupations of its employees.

(4) It gave the Governor-General-in-Council power to hear appeals from country courts in revenue cases. In suits of valuation of £5000 or more, an appeal could lie to the King-in-Council as against the decision of the Governor-General-in-Council.

(5) Lastly, the Governor-General-in-Council was empowered to frame regulations for the Provincial courts and councils. These could be disallowed by the King-in-Council within a period of two years. The Act also strengthened the position of the Governor-General-in-Council by freeing him from the need of registering regulations and securing sanction of the Supreme Court.

### **Fox's India Bill**

Although the Parliament passed the Amending Act of 1781, it still distrusted the executive and the judiciary.

\*G. N. Singh, p. 17.



It had known of the misdeeds of Warren Hastings who spent Indian revenues recklessly and provided jobs for the shareholders of the East India Company. The House of Commons by a resolution recalled Warren Hastings and Impey. The proprietors did not, however, agree to this action. The British statesmen did not lose hope. They put forward a number of proposals in Parliament for reforming the Company. In 1783, Dundas introduced a Bill which proposed to grant the Crown full powers to recall the principal officers of the Company, to authorise the Governor-General to overrule his council and to control effectively his subordinate Presidencies, and to compensate the zamindars who had suffered heavily during Warren Hastings' time. This Bill, however, was not passed. Thereafter, Fox, as a member of the coalition Government, introduced another Bill on November, 20, 1783, proposing the abolition of the Court of Proprietors and 'Directors' and vesting control of the Home government of the Company in a Board of seven Commissioners, to be nominated by Parliament. This Bill also proposed that matters of trade be managed by nine Assistant Commissioners nominated by the Court of Proprietors. Pitt, who was a great favourite of the Company, along with Grenvill and Wilberforce, opposed these proposals strongly. The Bill was passed by the House of Commons by 208 votes against 102; it could not, however, get through the House of Lords and the coalition ministry had, therefore, to resign.

### **Pitt's India Act**

Pitt next came to power. In 1784, he introduced his famous bill to suit the wishes of the Company. Like Fox, he was anxious to deprive the Company of all its political power and to vest the real control of Indian affairs in the Board of Commissioners,\* but he found it difficult to advocate in office what he had opposed as Leader of Opposition. He, therefore, took shelter under a fiction. He created an Indian Ministry without appearing to do so and tried to end the Company's control over Indian affairs without making it too obvious. Fox had outright proposed the end of the exer-

---

\*G. N. Singh, *Landmarks*, p. 33.



cise of political power by the Company. Pitt established a dual control, *i. e.* the government of the Parliament and the government of the Company. Pitt's India Act created a Board of six commissioners called the Board of Control, consisting of the Chancellor of the Exchequer, one of the Secretaries of State, and four other Privy Councillors. They were to be appointed by the Crown and were to hold office during the King's pleasure. The Board of Control was empowered to 'superintend, direct and control all acts, operations and concerns relating to civil and military government of the Company.' It was given full access to the Company's records. It was empowered to send for any papers and could approve or disapprove, modify or substitute the proposed orders. The Directors' authority was made subordinate to that of the Board of Control. The Court of Directors, however, continued to exercise the powers of patronage and exercised considerable influence over the administration. The Court of Proprietors became an effete body and it was not allowed to alter any decision approved by the Board of Directors. A committee of secrecy consisting of not more than three persons from among the Directors was appointed to transmit the orders of the Board requiring secrecy direct without informing the other Directors.

The Act also introduced some changes in the governmental machinery in India. It reduced the number of members of the Governor-General's Executive Council from four to three. It extended greatly the control of the Governor-General-in-Council over the Governors-in-Council of Madras and Bombay. Clause 21 of the Act laid down that the Governor-General-in-Council "shall have the power and authority to superintend, control and direct the several presidencies and their governments ...in all matters of peace and war or the application of Indian revenues or forces...in time of war, or any points as may be specifically referred to it by the Court of Directors." The Act also permitted the exercise of similar control by the Court of Directors over the Governor-General-in Council.

In India, Pitt's India Act provided the Governors of the Presidencies with a council of three members, including the local Commander-in-Chief. The Governor-in-Council was to



obey the directions of the Governor-General. The Governors were appointed by the Court of Directors and could be removed either by the Crown or the Court of Directors.

The Act laid down that the Governor-General and his Council would not be empowered to declare war or negotiate peace without the express permission of the Court of Directors. The Governments of Bombay and Madras could only declare war with the express permission of the Governor-General-in-Council of Bengal. In case the Governments of Bombay and Madras failed to carry out the orders of the Government of Bengal in matters of peace and war, the latter would have the right of suspending all the members of the offending council. Bombay and Madras were also required to send to the Government of Bengal copies of all regulations framed by them. The Act brought about unified control of administration in the spheres of diplomacy and military affairs. It also asked the Company to put its own house in order and not to pursue schemes of conquest and annexation which were "repugnant to the wish, the honour, and policy of this nation" (clause 24 of the Act). But this remained a pious wish of the author of the Act, because circumstances compelled the Governor-General to intervene in the affairs of the Indian States quite frequently.

### **Importance of the Act**

The Act of 1784 has great constitutional importance in history. It established a dual control in the Home Government. In other words, it entrusted the management of Indian affairs in England to the joint control of the Board of Commissioners and the Court of Directors, although the power of the former was made superior to that of the latter. Parliament's control over Indian affairs became tighter than before. The Act was able to establish centralised control of the Governor-General-in-Council over the affairs of India, as the Governors of the various provinces were made to pay due deference to the directions of the former. The power of the Governor-General and of the Governors in regard to their council became stronger by reduction of one member from the council. The power of the Proprietors was completely reduced. The Act was thus able to establish parliamentary supremacy over the affairs of the Company.



**Defects**

In the working of the Act, certain defects became manifest. The Act had not clearly defined the relations between the Board of Control and the Court of Directors. Pitt had expressly refrained from doing so in order to silence the Opposition. Once the Act was put on the statute book, the need for keeping the Directors in good humour was over and the Board of Control began to assert its authority and superiority over the Court of Directors.

There were often conflicts between the Board of Control and the Directors, as the mutual relations between the two were not clearly defined in the Act. The Board of Control contended that they enjoyed powers of supervision, direction and control over Indian affairs, and this power included the right of making appointments to carry out the work of supervision. This right of the Board of Control was contested by the Directors. This conflict grew in the time of Lord Wellesley. The matter was taken to the law Court which decided in favour of the Board of Control. Another quarrel which arose between the Directors and the Board of Control related to the question of sending troops to India at the expense of the Company. The Board of Control sent four British regiments to India and charged their expenses to Indian revenues. The Company contested this right of the Board of Control and argued that the Company had all the troops it needed and it was cheaper to raise troops in India than to get them from England. Ultimately, the quarrel was resolved with the passage of a declaratory Act in 1788, which conferred all the powers of raising troops and of spending money on the Board of Control. However, the Court of Directors retained control over the commercial affairs of the Company, while foreign affairs were controlled by the Board of Control.

The dual control made the position of the Governor-General awkward. He had to serve two masters at home, *i. e.*, the Directors and the Board of Control. The Directors made appointments and initiated policy and the President of the Board of Control could recall these officers and thus thwart the will of the Directors. The Governor-General, however, acted in his own way, avoiding the orders of both



the authorities. He was able to do so due to the great distance between India and England.

The dual control made the administration of the Company cumbersome. Lord Palmerston, Prime Minister of England, remarked in 1858: "The functions of Government and its responsibility have been divided between the Directors, the Board of Control and the Governor-General in India, and among these authorities it is obvious that despatch and unity of purpose can hardly exist."

The system of dual control continued up to 1858, when the Company and the Board of Control were abolished. Their functions were taken over by the Secretary of State and his Council.

#### **Charter Acts during 1793-1853**

The system of administration introduced by Pitt's India Act remained unaltered for several years except for some minor changes. In 1785, when Lord Cornwallis was appointed Governor-General, he demanded from the British Government power to override his Executive Council. The power was conceded. During the period 1793-1853 the Charters authorising the Company to carry on trade and exercise ruling authority were revised after the expiry of every 20 years. On each such occasion, the Parliament got an opportunity of reviewing the affairs of the Company and of tightening its control over its administration in India.

#### **Charter Act of 1793**

The Charter Act of 1793 granted a fresh lease of life of 20 years to the Company. The Act provided for the payment to the members and staff of the Board of Control out of Indian revenues. This unfortunate practice continued till 1919. The Board of Control was to consist of one senior member who was called President. The Secretary of the Board of Control was allowed to sit in Parliament. A provision was made in the Act to the effect that the Company "pay to the shareholders a dividend of 10 per cent and also the actual expenses of the Royal forces stationed in India." The Act made a few modifications in the system of government. The Governor-General and the Governors



were given the power to override their Councils. The Act empowered the Governor-General-in-Council to "superintendent, direct and control the governments and Presidencies of Calcutta and Bombay, in political, civil and military matters." He was also authorised to appoint a Vice-President of his Council from among the members to officiate for him during his visit to another presidency. When he moved into Bombay or Madras, he took the place of the local Governor as the head of administration. The Governor, however, retained his seat on the Council. The Act also made provision for the constitution of a covenanted civil service. It also extended the admiralty jurisdiction of the Calcutta Supreme Court to the high seas. Although the Act made complete provision for centralised control over the provincial governments, in actual practice the local governments enjoyed sufficient discretion in administration. This was made possible due to difficulties of communication, peculiarities of local circumstances and regular contacts between the Presidency Governments and the Court of Directors.

#### The Charter Act of 1813

When the Charter of the Company came up for renewal after the expiry of 20 years, there was heated controversy on the question whether its commercial privileges should be continued or not. Till now the Company had enjoyed the monopoly of both the Chinese and Indian trade. Free traders in England attacked this system and there was continual agitation for the ending of this monopoly. The main arguments advanced in favour of free trade were: (1) need for extension of British trade and commerce, (2) need to check the diversion of Indian trade to other countries; (3) desire to reduce the cost of trade, and (4) need to cheapen Indian raw materials imported into Britain.\* Malcolm, Hastings and Munro opposed this move. They said the abolition of the monopoly would bring ruin to India† and might lead to the oppression of the people. As pointed out by Hastings, "The European

---

\*Shah, *History of Indian Tariffs*, p. 103 cited by G. N. Singh.

† *Landmarks*, p. 42



settlers would insult, plunder and oppress the natives and no laws enacted from home could prevent them from committing acts of licentiousness of every kind with impunity." The final Act that was passed in 1813 represented a compromise between these two view-points. Its main provisions were :

(1) It renewed the Charter of the Company for another 20 years.

(2) It abolished the trade monopoly of the Company for India except in respect of tea. Its monopoly of trade with China was, however, preserved.

(3) It made provision for a Bishop for India and an Archdeacon for each of the Presidencies.

(4) It made provision for the training of the Company's civil and military servants and set apart a sum of rupees one lakh for "the revival and improvement of literature and the encouragement and promotion of knowledge among the people."

(5) It made special provision for the administration of justice in cases in which Britishers and Indians were involved. Special penalties were laid down for theft, forgery and currency offences.

Lastly, the Act provided that no more than 29,000 troops were to be maintained out of the revenues of the Company.

#### The Charter Act of 1833

The Charter Act of 1833 was described by Lord Morley as "the most extensive measure of the Indian Government between Mr. Pitt's Act of 1784 and Queen Victoria's assumption of the powers of government in 1858." Various factors had emerged at the time of the passing of this Act. The doctrine of *laissez faire* held sway and liberal ideas of reform and rights of man were working in the minds of the people of England. In this atmosphere it was not possible for the Company to harp on its right of monopoly trade. The first thing that the Act did was to strip the Company of its commercial functions altogether and to turn it into a purely administrative body. Thus, the chief defect in the Indian administration referred to by Charles Grant



as "the union of the trader and the sovereign" was removed. The Act made provision for the payment of a 10.5 per cent dividend to the shareholders from Indian revenues for the next 40 years. It declared that though the administration of India would continue to be carried on by the Company, it would do so as a trustee of the Crown. This vesting of administrative powers in the hands of the Company was vehemently opposed by one Mr. Buckingham and some other M. P's in the House of Commons. Mr. Buckingham said, "It is preposterous to leave the political government of an immense empire in the hands of a Joint Stock Company." He suggested the formation of a representative government in India. Lord Macaulay, on the other hand, wanted to retain the Company as an organ of government for India. Quoting James Mill, he said, "Representative government in India was utterly out of the question."

The Act provided that the President of the Board of Control, who acted as Minister for Indian affairs, should have two Assistant Commissioners to assist him. He was to have a Secretary who could sit in the Commons and speak for him when his chief sat in the House of Lords. The Directors were to act as expert advisers of the President of the Board of Control.

The Act brought about centralisation in administration. The Governor-General of Bengal was designated as the Governor-General of India. The Governor-General's Council was expanded with the addition of a fourth member known as Law Member. The Governor-General of India in Council became the sole authority for making laws for all persons in India. The Presidencies of Bombay and Madras were deprived of all powers of legislation. They could only submit drafts or projects of any laws or regulation which they thought expedient.\* The laws passed by the Government of India were to be called 'Acts', and the rules framed by the Governments of Bombay, Bengal and Madras were to be called 'Regulations'. The Act also made provision for the appointment of a Commission to codify all existing laws. Lord Macaulay was appointed its President. The Indian Penal

---

\*Clause 66 of the Act, Mukerjee, *Indian Constitutional Document*, Volume I, p. 96.



Code and the Criminal Procedure Code were the outcome of the work of this Commission.

The Act for the first time enacted that no native of India shall, by reason of religion, place of birth, descent, or colour, be disabled from holding any office under the Crown.

The Act directed the Governor-General to take steps for the abolition of slavery in India, and propose due measures of the same.

The Act increased the number of Bishops to three and made the Bishop of Calcutta as the Metropolitan Bishop in India.

Lastly, the Act provided for the training of the civil servants at the Company's college at Haileybury and regulated admissions to that college.

The Act of 1833 has great constitutional significance. It removed some of the patent defects in the system of administration. It introduced uniformity in the laws of governance by establishing the legislative supremacy of the Central Government and did away with diversities in the laws of different Presidencies. It also removed the anomalies and the conflicts in the jurisdiction of various courts. It established uniformity in general administration by concentrating all the threads of executive and financial administration in the hands of the Governor-General. It provided for the abolition of slavery and for the appointment of Indians to higher posts. Above all, it succeeded in establishing the supremacy of the Crown and Parliament in the management of Indian affairs and in restricting the powers of the Court of Directors.

### **The Charter Act of 1853**

When the Charter again came up for renewal in 1853, representations were made, chiefly by Indians, that no further extensions in term should be granted to the Company. It was said that none of the promises made by the Company to appoint Indians to high offices had been fulfilled and that it was high time that the Company was liquidated.

The British Government appointed a Committee of



Enquiry in 1852 and on the basis of its report passed an Act in 1853. The main provisions of this Act were as follows :

(1) Contrary to usual practice, the Act did not renew the charter for a definite period of 20 years. It merely said, the charter is renewed "until such period as the Parliament shall otherwise provide." In other words, the Company, in a way, was given notice to quit.

(2) The Act took away from the hands of the Directors the right of patronage. It entrusted this work into the hands of a Commission which recruited people on the basis of a public competition.

(3) The number of Directors was reduced from 24 to 18. Of these, at least 10 were to be persons who had experience of administration in India for at least 10 years.

(4) Three sub-committees consisting of six Directors each were formed to deal with judicial, financial and political matters. The secret committee of three Directors was to continue as before.

(5) The salary of the President of the Board of Control was fixed at £5,000 per annum. His approval was made necessary for the appointment of members to his Council.

(6) The Governor-General of Bengal was relieved of the administrative duties relating to Bengal. A Lieutenant-Governor was put in charge of this work.

(7) The Law Member was made a full member of the Governor-General's Council and was given full powers to attend and vote in the meetings of the Executive Council.

8. For the first time, the legislative and the executive functions of the Governor-General's Council were separated. For purposes of legislation, the Council was enlarged by the addition of six members, so that all laws were to be passed in a meeting of twelve members—the Governor-General, the Commander-in-Chief, four members of the Council and six legislative members. The latter included two English Judges of the Calcutta Supreme Court and four representatives of the local governments of Madras, Bombay, Bengal and Agra. The proceedings of the Legislative Council became public and were published. A quorum of six was fixed for a legally-constituted meeting of the Council. All



bills passed by the legislature could become Acts only on receiving the assent of the Governor-General.

The Act of 1853 marks the beginnings of the parliamentary system in India. For the first time, it made legislation a special function of the government requiring special machinery and special processes. It turned the small legislative body in India into "an Anglo-Indian House of Commons" questioning the acts of the Executive and forcing it to lay information on the table. It granted powers to the Governor-General to take over the administration of any part of the country in times of emergency. It also gave him the power to reconstitute the boundaries of any province.

The Act was not free from defects. It did not associate any Indian with the legislative body; its English members had no knowledge of local conditions. The exclusion of Indians bred discontent and proved to be one of the reasons for the outbreak of the Mutiny.

#### **Indian Administration on the eve of the Mutiny**

It would be useful to recount in brief the system of administration as it existed in India on the eve of the Mutiny.

*Administration of the Government.* The superintendence, direction and control of Indian affairs were vested in the President of the Board of Control who held a ministerial post in the British Cabinet. The President was assisted by a Secretary who also sat in the House of Commons. The Parliament as such was not much interested in Indian affairs and it was only very rarely that Indian affairs figured in its debates. The reason for this was partly that the members were very much preoccupied with their own problems, and partly that, the salary of the President of the Board of Control and of his establishment was paid not out of the British Exchequer but out of Indian revenues. The members of Parliament took some interest in Indian affairs either when the constitution of India came up for some important amendment, or when some question affecting British interests was involved.

*Administration in India.* In India, the Governor-General-in-Council was the chief executive. He was appoint-



ed by the Court of Directors on the approval of the Crown. He was subject to the control of two authorities in England, *viz.*, the Court of Directors and the British Crown. He could be recalled by both the authorities if he proved himself unsuitable for the job. His council was a collegiate body. It consisted of four ordinary members, two civil servants of 10 years' standing, one military officer and one law member. The Commander-in-Chief was one of its extraordinary members. The Governor-General was empowered to override his Council. He could also exercise his casting vote in case of a tie. The work of administration was divided into five departments, *viz.*, legislative, financial, political, home and military. The Presidencies of Bombay and Madras were administered by Governors-in-Council, and Bengal and North-Western Provinces were each governed by a Lieutenant-Governor. The Punjab, Assam, Nagpur, Oudh, Ajmer and Delhi were administered by Chief Commissioners who functioned under the direct control of the Governor-General-in-Council. The Court of Directors appointed the Governors with the approval of the Crown, while the members of their council were appointed by the Directors on the approval of the President of the Board of Control. The appointments of Lieutenant-Governors and Chief Commissioners were made directly by the Governor-General-in-Council. The governments of Presidencies, provinces and Chief Commissioners were under the general superintendence, direction and control of the Governor-General-in-Council. The Chief Commissionerships were under the rigid control of the Central Government.

The Governor-General-in-Council framed laws with the help of his legislative councillors numbering 12, who included four provincial representatives and two judges. This body developed into a petty House of Commons as it started questioning the executive for its administrative actions, besides performing its legislative business. The provincial governments suffered greatly because of the loss of the legislative powers. They could not get laws suiting their special interests passed without the consent of the Centre. As nine of the 12 members of the 'Council' came from Bengal, the interests of Bombay and Madras were often ignored and they did not get a fair deal from the 'Council'.



There were three Supreme Courts at Bombay, Calcutta and Madras for the administration of justice. Each court had a Chief Justice and two judges. The administration of justice by these courts was not impartial and the courts had deteriorated into 'tools of racial discrimination'. The courts administered English law or such Indian laws as could be made applicable to British subjects in India. The British subjects of the Crown could be prosecuted only in courts set up at the presidency towns. In this respect, the courts discriminated between British and Indian citizens.

The East India Company maintained its own courts in all provinces. There were Sadar Diwani Adalats (civil courts) and Sadar Foujdari Adalats (criminal courts) in Bengal, Bombay, Madras and North-Western Province. Below them there were district and sessions courts in every district. Appeals against the decisions of the lower courts lay to the superior courts. The collector heard all type of cases in the district.

The Company maintained its own armies manned largely by the British with Indians holding subordinate positions. There were three independent commands in Bengal, Bombay and Madras. The Commander-in-Chief of the Bengal army was the Commander-in-Chief of India. Authority in the army was centralised. Although the Indian soldiers far outnumbered Europeans, they were poorly paid and could not rise beyond the rank of Subedar-majors. Civil servants under regulations made in 1854 were recruited through a public competitive examination. A large number of officers holding civil posts were drawn from the army. Promotion in the army and in the civil service was made on the basis of seniority.

The administration of Indian States was carried on through Agents to the Governor-General, Residents and Provincial Governments. All the States were under the control of the Political Department of the Government of India. The British authorities differentiated between two types of States—protected allies and subordinate States. According to the doctrine of lapse introduced by Lord Dalhousie, if a ruler had no male heir and if he failed to secure permission for the adoption of a successor, his State



could be annexed to British territory. This doctrine was made applicable to the second category of States.

Indian administration on the eve of the Mutiny was full of glaring defects. The British took no interest in the welfare of their Indian subjects. The Company's servants exhibited racial arrogance in their dealings with the natives. They crippled cottage industries and the export trade of India. They forced cheap British goods into Indian markets. Their administration of justice was most unfair. The missionaries played havoc in Indian territories. The policy of economic exploitation resulted in the impoverishment of the people. All these factors led to general dissatisfaction among people which culminated in the outbreak of the so-called 'Mutiny'—the First War of Indian Liberation.

### The Mutiny

European historians and scholars like Griffith have tried to prove that the Great Rebellion of 1857 was nothing more than a sepoy revolt, and that it was not a national rising because it covered a limited area and was not joined by the rank and file. Modern research has, however, established the truth that the revolt was a national liberation movement; it covered a very wide area and the mutineers were helped by the civil population throughout the length and breadth of the country. The real cause of the Mutiny was the growing discontent among the people owing to economic, political, religious and cultural factors. The British had assumed sovereignty over India by force, fraud, forgery and chicanery. The princes and the people of India were conscious of the loss of their power and independence. The intelligentsia was feeling a sense of humiliation at its complete exclusion from the services. The policy of racial discrimination pursued by Europeans and the hostile behaviour of the British officers towards the natives were the other causes of discontent. The weavers, spinners and traders were squeezed out by free trade. The Christian missionaries were engaged in a campaign of wholesale proselytisation. In the army there was great disaffection, too. The majority of Indian soldiers were poorly paid and were kept in subordinate positions.



The immediate cause of the discontent is of course described as the introduction of the Enfield rifles which required the use of cartridges greased with animal fat. This hurt the religious susceptibilities of the various castes employed in the army. It proved a signal for a general revolt in the country. The Rani of Jhansi, Nanasahab Peshwa and Tantia Topi led the revolt which spread to all parts of India. The fact that the revolt was suppressed was due not so much to lack of a national feeling as to lack of a superior and organized power. The superior force of the East India Company aided by mercenary natives suppressed the movement with unparalleled violence and force. In the words of Sardar Gurmukh Nihal Singh, "in restoring order the British committed great atrocities the memory of which rankled in Indian minds long after the rising was suppressed, and produced consequences whose significance escaped recognition till long afterwards.\*"

The Revolt of 1857 sealed the fate of the Company for all time as the entire responsibility for its outbreak was placed on the corrupt administration of the Company. John Bright on this occasion declared in the House of Commons, "The conscience of the nation had been touched on the question, and it came by a leap—as it were, by an irrepressible instinct—to the conclusion that the East India Company must be abolished."† Palmerston introduced a bill in Parliament on February 12, 1858, suggesting the transfer of the administration of Indian affairs into the hands of the Crown. John Stuart Mill pleaded the cause of the East India Company forcefully, saying that parliamentary control would not prove more effective than the control of the Court of Directors. He said the Court of Directors had statesmen experienced in Indian affairs. They were non-party men and as such could exercise duties impartially. He, therefore, pleaded that the administration "should not be transferred to a Minister of the Crown." He also maintained that the time was not ripe for effecting these changes. Lord Palmerston answered these objections, saying that the Parliament was a responsible body; it was not ineffective, as in the past

\*G. N. Singh, *Landmarks in Indian Constitutional Development*, p. 6.

†A. B. Keith, *Speeches on Indian Policy*, Vol. 1, p. 320.



all improvements in administration had been sponsored by the Members of Parliament. He pointed out that the present system suffered from want of unity, efficiency and sense of responsibility. Palmerston uttered the memorable words thus : "The principle of our political system is that all administrative functions should be accompanied by ministerial responsibility—responsibility to Parliament, responsibility to public opinion, responsibility to the Crown ; but in this case, the chief functionaries of the Government of India are committed to a body not responsible to Parliament, not appointed by the Crown, but elected by persons who have no more connection with India than consists in the simple possession of so much stock".

The measure introduced by Lord Palmerston was not put on the Statute Book in his time as he had to relinquish office after the second reading of the Bill. It was enacted during the time of Mr. Disraeli. The Bill was reintroduced on April, 30, 1858, and passed as an 'Act for the Better Government of India, 1858.'

#### The Act of 1858

*The Secretary of State.* The Act of 1858 effected the formal transfer of the Indian Government from the Company to the Crown. It declared that India was to be governed directly by and in the name of the Crown, acting through a Secretary of State to whom were transferred all the powers that had hitherto been exercised by the Court of Directors or the Board of Control. The Secretary of State for India was to be a member of Parliament and a Minister of Cabinet rank. In the discharge of his duties he was to be assisted by a council of 15 members, at least nine of whom were required to be persons who had lived or served in India for a period of 10 years, and who must not have left India more than two years prior to their appointment. The Councillors were to be appointed by the Crown and were to hold office during good behaviour, but could be removed on "an address by both Houses of Parliament." The salary of the Secretary of State for India and that of the members of his Council was to be paid out of the revenues of India. The members of the Council were not required to be members of Parliament. They were paid a



yearly salary of £1500 out of Indian revenues and were entitled to pension on retirement.

*The Secretary of State and the India Council.* The Secretary of State for India was the President of the Council. He enjoyed the right of vote, and in case of equality of votes, also a casting vote. The Council met twice a week. The Acts specified certain spheres in which the Secretary of State was to exercise his powers in concurrence with his Council and in accordance with its majority opinion. Such spheres were, for example, those which concerned the grant of appropriation of Indian revenues, or matters relating to public services, or matters relating to contracts, sales or purchases on behalf of the Government of India or in any way connected with its property. There were, however, other spheres in which he could override his Council. He was given the power to divide his Council into committees for the convenient discharge of business. He could also send to and receive secret dispatches from the Governor-General and was not bound to communicate their contents to the members of his Council.

The purpose of the India Council when it was formed was to put a curb upon the powers of the Secretary of State. In actual practice it so turned out that the Council came to be recognised as no more than a consultative body without any of the attributes of a Cabinet. The Secretary of State possessed the power of initiative in all matters and he exercised a great influence over his Council. The members of the Council, who belonged to the age group 55 to 60 cared more for their pay and position rather than for the powers of their office. They did not, therefore, endeavour to disagree with the Secretary of State in any matter. In the circumstances, the Council proved to be an appendage, having outgrown its utility.

The assumption of the Government of India by the Crown according to Sir H. S. Cunningham was "*rather a formal than a substantial change.*" Already substantial powers vested in the hands of the President of the Board of Control. The Court of Directors' authority had been reduced by the Act of 1853. Firstly, the members had been reduced



from 24 to 18 and, secondly, out of 18 members, six were the nominees of the British Crown. The Act of 1853 in a way had also given the final notice to quit to the Company by not renewing its charter for any fixed term. It had categorically declared that the Company would retain the Indian territories "in trust for Her Majesty, her heirs and successors, only until Parliament shall otherwise provide". It is, therefore, evident that the Act of 1853 prepared the ground for the taking over of the sovereignty of India by the British Crown. *The Act of 1858 only formalised a procedure which had been started earlier.* The President of the Board of Control was superseded by the Secretary of State and the India Council took the place of the Court of Directors. The formal effect of this transfer of power was that the Parliament acquired full formal control over Indian affairs. Questions on Indian administration could now be asked of the Secretary of State. Every year he was required to present to the House of Commons a report on the moral and material progress of India. The Governor-General as the representative of the Crown became the head of the Indian administration. The Provincial Governments under the Governors or the Chief Commissioners acted as agents of the Viceroy and Governor-General-in-Council. At the bottom of the ladder stood the District Magistrate who acted as the pivot of the Indian administration.

#### **Queen Victoria's Proclamation of 1858**

The passing of the Government of India Act of 1858 was followed by Queen Victoria's Proclamation which enunciated important principles of policy and tended to satisfy Indian sentiment. It promised to pay due regard to the ancient rights, usages and customs of the Indian people and to abide by the treaties and engagements entered into by the East India Company with the Indian princes. It also said that the rights, dignity and honour of the Indian princes would be protected and that the Government would abstain from interference in the religious beliefs or modes or worship of its Indian subjects. It promised a general amnesty to all offenders except those who had been guilty of murder of the British. Lastly, it promised to admit to office all Indian subjects, of whatever race or creed they were, pro-

vided they were qualified to hold particular offices by virtue of their education, ability and integrity.

This proclamation served to allay the perturbed minds of the people to a very large extent. Its only fault was that it did not grant any political rights to Indians or a responsible share to them in the administration of their country. It led to the grant of limited political concessions as provided for in the Councils Act of 1861. These gratified only a few ambitious aristocratic people. The majority remained dissatisfied, as it demanded self-government—being motivated by the resurgence of a new national consciousness created by the establishment of political unity in the country, the introduction of western system of education, and the establishment of the Indian National Congress in 1885.

#### Select Bibliography

- Mukerjee* : Indian Constitution Documents, Vol. I.  
*C. P. Ilbert* : Historical Survey.  
*A. B. Keith* : Speeches and Documents on Indian Policy, Vol. I.  
*C. L. Anand* : History of the Government in India, Part II.  
*Monkton-Jones* : Warren Hastings in Bengal.  
*Chesney* : Indian Policy.  
*A. C. Banerjee* : Indian Constitutional Documents, Vol. I.



## CHAPTER 3

### INDIA UNDER THE CROWN

#### Beginnings of Representative Government

With the assumption of the power of administration by the British Crown in 1858, a new era in the constitutional history of India opened up. It proved to be the beginning of representative government in India. So far no attempt had been made to associate Indians with the administration of their country. In fact, in the words of Sir Syed Ahmad, one of the chief causes of the Revolt of 1857 was the exclusion of Indians from the seats of power. This tended to create misunderstanding and misgivings in the minds of the people regarding "the intentions of the Government."\* When the question of associating Indians in the work of the Councils was raised in the British Parliament in 1856, it was turned down by Mr. Gladstone.† It was only in 1861 that a beginning was made in this direction.

#### The Indian Councils Act of 1861

The Indian Councils Act of 1861 for the first time admitted some representative and influential Indians into the Legislative Council. We have seen before that the 1853 Charter Act had introduced a difference between the executive and the legislative functions of the Governor-General's Executive Council. For the latter purpose, the size of the Governor-General's executive council was enlarged by the addition of six members. Sitting as a legislative body, it was to be addressed as Imperial Legislative Council. The 1861 Act increased the number of legislative members in the Governor-General's Executive Council from six to "not less than six and not more than 12." At least half of these members were required to be non-officials. They were appointed by the Governor-General for a term of two years. The Maharaja of Patiala, the Raja

\*C. L. Anand, *Introduction to the History of Govt. of India*, Part II, pp. 72-73.

†G. N. Singh, p. 71.

of Benaras and Sir Dinkar Rao were nominated, in the first instance. It was hoped they would turn the minds of the natives of high rank and excite their loyalty to the British administration. In the beginning however, the function of the members was confined only to legislation. They were not permitted to put questions or criticise the Executive.

The 1861 Act also restored to the Governments of Madras and Bombay the legislative authority which had been taken away from them by the Charter Act of 1833. It created local legislatures for Bombay and Madras in 1861, for Bengal in 1862, for the North-Western Province (U.P.) in 1886 and for the Punjab in 1897. These legislatures were to consist of from four to eight members in addition to the Advocate-General of the Province; half of the members were to be non-officials nominated by the Governors. The local legislature could not legislate on matters such as taxation, currency, penal code, etc., which required to be uniform throughout India. Final assent of the Governor-General was necessary for all measures passed by the provincial legislatures. He thus directly controlled local legislation.

At the centre, the Governor-General's Executive Council was expanded by the addition of a fifth Finance Member and the Commander-in-chief was made an extraordinary member. The portfolio system in the Government of India was introduced. The foundations of a Cabinet system were thus laid.

The Governor-General (without his Council) was empowered to issue ordinances in cases of emergency. Such ordinances remained in force for not more than six months.

The Act made a special provision in regard to the provinces which were newly created. The existing laws in some provinces were held valid. The Governor-General was empowered to create new provinces or alter the boundaries of the existing ones.

*Merits.* In brief, the Act of 1861 strengthened the powers of the Central Government. It established the supremacy of the Governor-General over the whole of India. It marked the first step towards the development of provincial autonomy. It restored the legislative powers of the Madras and



Bombay Governments which had been taken away by the Act of 1833. It admitted Indians into the higher councils of the Government. It modified the constitution of the Governor-General's Executive Council and remodelled it on the lines of departmental working.

*Defects.* The Act was not, however, free from defects. It did not make substantial transfer of power to the people. The Legislative Councils established under the Act were merely enlargements of the Governor-General's Executive Council. They functioned merely as committees by means of which the Executive Government could obtain advice and assistance in the task of legislation. Not a single elected Indian was represented in them. Their powers were hedged in by many restrictions. They were not deliberative bodies. They could not exercise any control over the executive. Their work was strictly confined to legislation. The Act did not satisfy any section of Indian opinion. Consequently, agitation was carried on for a more effective transfer of power.

The period between 1861 and 1892 may be described as a period of the growth of national awakening. During this time there was spread of English education due to establishment of universities at Calcutta, Bombay and Madras. English-educated Indians came into touch with the best of English thought – with the works of Milton, Burke, Mill, Macaulay and others and were imbued with ideas of modern nationalism and democracy. During this period there was also a movement of religious revival. Great religious leaders like Raja Ram Mohan Roy, Swami Vivekanand, Ramkrishna Paramhans and Swami Dayanand preached their gospels during this period. Their teachings infused in the people a new spirit of freedom, fearlessness and just pride in their cultural heritage. This made the people conscious of a sense of humiliation under alien rule and increased popular discontent against the British Government. These feelings found vocal expression in the nationalist Press and the popular literature which came to be produced in this period. The Government curtailed the civic liberties of the people by gagging the Press through the Vernacular Press Act of 1878. In the time of Lord Lytton, the policy of



repression was carried a step further. Indians were excluded from responsible jobs in administration. The policy of racial discrimination between Europeans and Indians was carried to the extreme.

Lord Ripon, who succeeded Lord Lytton, tried to reverse this policy. He proposed legislation known as the 'Ilbert Bill' to provide for equal treatment to Indians and Europeans in the sphere of criminal jurisdiction. The European community opposed this move tooth and nail, and so the proposal had to be dropped. The failure of the Bill widened the gulf between the ruling community and the ruled. Self-respecting Indians gave expression to their resentment by organizing public bodies like the National League, the Indian Association of Bengal (1883), the Bombay Presidency Association, the Mahajan Sabha of Madras (1884), the Poona Sarvajanik Sabha (1870), etc.

After the retireemnt of Lord Ripon, Lord Dufferin took over as Viceroy. He was apprised by a retired English civilian, Mr. O. A. Hume, of the growth of popular discontent in India and was advised to establish the Indian National Congress which could serve as a shock-absorber. The body could inform Government of the views of educated people regarding its administration. Thus, the Indian National Congress was born in 1885.

In its very first Session, the Congress passed resolutions favouring the abolition of the India Council, requesting the simultaneous holding of examinations for the I. C. S. in India and England, and demanding the holding of elections for the membership of the existing Councils. It also pressed for the creation of Legislative Councils in the N.-W. F. P., Oudh and the Punjab. These demands were very modest and Lord Dufferein, the then Viceroy, gave his partial support to them. He set up a committee in 1888 with Sir George Chesney as President to consider the question of reforms. He said he was in favour of enlarging the provincial Councils, for enhancing their status, for multiplying their functions and for the liberalisation of their general character as political institutions. He made it clear that he was not contemplating the setting up of a parliamentary system after the British model. He said: "It might be con-



cluded that we were contemplating an approach to English parliamentary government and an English constitutional system. Such a conclusion would be very wide off the mark; it would be wrong to leave the Indian public opinion under so erroneous an impression...India's destinies have been confided to the guidance of an alien race. All that the Government hoped to do was to associate a considerable number of selected and elected Indians from the educated classes with the administration, so that it could keep in contact with a larger surface of Indian opinion and thus multiply the channels by which they would ascertain the wants and the feelings of various communities, for whose welfare they were responsible".\*

### The Act of 1892

The Committee set up by Lord Dufferin reported in 1890. On its recommendation the Indian Council Act of 1892 was passed by the British Government at the instance of Lord Cross, the then Secretary of State for India. The Act liberalised the composition and powers of the Central and Provincial Legislatures and improved their status. The number of maximum additional members in the Imperial Legislative Council was increased from 12 to 16. The sizes of the local legislatures were also widened. Thus, Madras and Bombay got 20 members each, U. P. 15 and the Punjab and Burma nine members each. The officials were, however, kept in the majority in all the Councils. The additional members of the Imperial Council were nominated by the Governor-General on the basis of the recommendations of various bodies like the Chambers of Commerce, universities, landholders, etc. These recommendations were not, however, binding on the Governor-General. Besides the 16 additional members, the Imperial Legislative Council had nine ex-officio members, namely, the Governor-General, six ordinary members of the Executive Council, the Commander-in-Chief, and the head of the Province in which the Council met.

In the provinces members of the legislature were to be nominated by the Governor on the recommendation of District Boards, universities, landlords and merchants.

\**Report on Indian Constitutional Reform, 1918, p. 43.*



The Act widened the opportunities for non-official members to criticise the Government. It also gave them the right to put interpellations but without the right to put supplementary questions. The annual financial budget was also placed before the Council but only for general discussion. No authority was given to the members to pass a resolution or divide the House in respect of items of the Budget. No motion for adjournment was also allowed.

*Defects.* The Act of 1892 failed to satisfy any section of Indian opinion. It was criticised in successive sessions of the Indian National Congress. The Legislative Councils were ridiculously small bodies and could not be said to represent the country. At their meetings 'a handful of officials and two or three complacent Indian gentlemen sat round a table and read manuscript speeches in turn'\* Minoo Masani has rightly called them 'limp Councils'.† They did not represent elected Indians. They gave representation to some vested interests, to the exclusion of all others. In the case of Bombay, out of six seats two were given to European merchants. The number of non-official members was very small. Out of 24 members at the Centre, 14 were officials, four elected non-officials and five nominated non-officials. The Executive Councils were not responsible or even responsive to the legislature.

In spite of these glaring defects, the reforms proved useful because they brought into the legislative sphere such eminent men as Gopal Krishna Gokhale, Ashutosh Mukerjee, Rash Behari Ghosh and Surendra Nath Banerjee. These people gave ample proof of their political wisdom and parliamentary capacity.

### Lord Curzon's Regime and Growth of Extremism

The period between 1892 and 1909 was marked by a new spirit of freedom among the people. Lord Curzon, who was the Viceroy and Governor-General during this period, followed a policy which caused great resentment and disgust among the people. His high handed policy has been beautifully summarized by Dr. Pattabhi Sitaramayya in these words:

\*Ilbert and Meston, *New Constitution of India*, p. 38.

†Chintamani and Masani, *India's Constitution at work*, p. 3.



“His curtailment of the powers of the Calcutta Corporation, his Official Secrets Act, his officialization of the Universities which made education costly . . . his Tibetan Expedition . . . and finally his Partition of Bengal, broke the back of loyal India and roused a new spirit in the nation. Even more galling to our sense of self-respect than this speech in Calcutta regarding our untruthfulness was his sweeping charge that we Indians were by our environment, our heritage and our upbringing “unequal to the responsibilities of high office under British rule.” Lord Morley writing in his ‘Recollections’ about the Curzon regime says much in the same strain : “We were told by leading moderates that even the general loyalty had been chilled by his (Lord Curzon’s) declared policy of centralization ; by his whittling away, as they called it, of liberal principles and promises of Queen Victoria’s proclamation of 1858; by too openly expressed contempt for Indian standards of morality; and by measures, like the Partition of Bengal, carried out against the strong wishes of the people concerned”\* The Partition of Bengal was effected on October 16, 1905. Its object in the words of Sir Henry Cotton was ‘to shatter the unity of Bengal and to disintegrate the feeling of solidarity which existed in the provinces.’ It was not done for any administrative reasons. Lord Curzon wanted to destroy the political consciousness and the patriotic spirit among the people of Bengal. He wanted to drive a wedge between the Muslim province of East Bengal and the predominantly Hindu province of West Bengal. As a counterblast against the move, Surendra Nath Banerjee organized an anti-British agitation which brought into politics a large section of the student community. Such students belonged to two schools of political thought. One was the anarchist school which believed in violence and terrorist activities ; the other was the peaceful school associated with Mr. Tilak, Aurobind Ghose, Bepin Chandra Pal and Lala Lajpat Rai. The Indian National Congress itself was split into two camps—the Moderates and the Extremists. The British Government in order to curb the Extremists tried to conciliate the Moderates. In 1906, Lord Minto replaced Lord Curzon as the Governor-General of India. He immediately appointed a

\*Viscount Morley, *Recollections*, Vol. II p. 155.



committee of his Council to consider the problems arising out of the growing aspirations of educated Indians to take a larger part in the administration of the country. At this time Lord Morley also took over as Secretary of State for India. Both these liberal statesmen proposed a further instalment of political reforms for India.

### **The Morley-Minto Reforms**

But at the same time, to counteract the rising tide of nationalism, they sowed the seeds of permanent discord in the country in the shape of communal representation. Lord Minto inspired a section of Muslims to wait in deputation on him and demand the right of separate electorates. This was done. A deputation, under the leadership of H. H. the Aga Khan, waited on the Viceroy and demanded separate representation for the Muslims. The Viceroy readily accepted their demand and wrote the following in reply : "The pith of your address, as I understand it, is a claim that under any system of representation, whether it affects a Municipality or a District Board or a Legislative Council, in which it is proposed to introduce or increase an electoral organisation, the Mohammeden community should be represented as a community. You point out that in many cases electoral bodies as now constituted cannot be expected to return a Mohammeden candidate, and if by chance they did so, it could only be at the sacrifice of such candidate's views to those of a majority opposed to his community whom he would in any way represent, and you justly claim that your position should be estimated not only on your numerical strength, but in respect to the political importance of your community and the service it has rendered to the Empire. I am entirely in accord with you. Please do not misunderstand me. I make no attempt to indicate by what means the representation of communities can be obtained, but I am firmly convinced that any electoral representation in India would be doomed to mischievous failure if it aimed at creating a personal enfranchisement regardless of the beliefs and traditions of the communities composing the population of this Continent." Lord Minto in his correspondence with Mr. Morley, the Secretary of State for India, also supported this proposal. But the latter, on account of his liberal background, did not



feel happy about it. In his despatch he emphasised that a scheme of separate electorates would retard the growth of the national spirit. He was personally in favour of mixed or composite electoral colleges which could ensure adequate representation to the Muslims without widening the communal gulf. But that was not to be. Unfortunately, Mr. Morley did not press his point against the scheme of separate representation, although he told the Viceroy that he (Viceroy) would be responsible for the consequences of the introduction of separate electorates. Mr. Morley wrote to Lord Minto on December 6, 1909 : "I won't follow you again into our Mohammeden dispute. Only I respectfully remind you once again that it was your early speech about their extra claims that started the (Muslim) hare. I am convinced my decision was the best."

Meanwhile, the Muslim League had been set up on December 30, 1906. It reiterated its demand for separate representation in 1908 and in 1909. It sent deputations to England in order to win over Mr. Morley. Communal representation was conceded to India by the British authorities and embodied in the Indian Councils Act of 1909. This was a personal triumph for Lord Minto, who had earlier described the day on which the Muslim Deputation met him as 'an epoch in Indian history'.\* Lord Minto was in fact the real father of communal electorates. His aim was twofold. Firstly, he wanted to isolate the extreme nationalists by conciliating the moderates. Secondly, he wanted to consolidate the British Empire by securing the support of Muslim communalists against nationalist Hindus.

### The Act of 1909

The Act of 1909 is regarded as a landmark in the history of Indian administration and positively marks an advance on the Act of 1892. It sought to associate Indians, in a real and effective manner, not only with the work of legislation but also with the day-to-day administration of the country. It increased the strength of the Councils and gave them the right of interpellations and of moving resolutions. It also made provision for the appointment of Indians to the Exe-

\* *Lady Minto's Diary*, p. 45.



cutive Council. Its main provisions may be briefly summarised as under :

(1) Firstly, the Act enlarged the size of the Councils. It raised the maximum number of additional members in the Imperial Legislative Council from 16 to 60. In the Provincial Councils, it raised the number of members in Bombay, Madras and Bengal from 20 to 50, and in U. P. from 15 to 50. The Legislative Councils of Burma and the Punjab were to have a maximum of 30 members. Each legislature was to have three types of members—nominated officials, nominated non-officials, and elected members. The provincial legislatures were to enjoy non-official majorities, although substantial majority of the officials in the Governor-General's Imperial Legislative Council was to be maintained. The latter was to consist of 69 Members, 37 of whom were nominated officials and 32 elected. The nominated officials included the Governor-General, six Councillors, the Commander-in-Chief, the Lieutenant-Governor of the Punjab at Simla, and 28 nominated officials from the Central Government and the provinces. The elected members included representatives of landlords, a member each of the European Chamber of Commerce and the Indian Chamber of Commerce, and 17 members representing the non-official members of the Legislative Councils of Bengal, Bihar, Assam, the United Provinces, the Punjab, Bombay, Madras and the Central Provinces. Out of these five members were elected by the Muslims and the rest by non-Muslims. The actual strength of the members of the Provincial Councils was as follows : Bengal 52 ; Madras, Bombay and U. P. 47 each ; Bihar and Orissa, 44 each ; Assam 25 ; Punjab, 25 and Burma, 16. In addition, the head of the Government was empowered to nominate one or two experts to the provincial legislature, when he thought such expert advice was called for.

The Act abolished the 'veiled' or roundabout system of representation provided in the 1892 Act. Instead, it introduced a system of elections according to which the people elected the members of local bodies, the latter elected the members of the provincial legislature and they in turn elected the members of the Imperial Legislature. The Act introduced three categories of electorates, *viz.*



(1) General electorate consisting of non-official members of provincial legislatures who elected representatives to the Imperial Legislative Council, and non-official members of the Municipal Committees and District Boards who elected representatives to Provincial Legislative Councils ; (2) separate electorates for Muslims ; (3) Special electorates for specified classes, such as landlords, universities, chambers of commerce, millowners' associations, etc. Seats were reserved for the Muslims and only Muslims could elect such representatives.

The new Act increased the functions of the Legislative Councils as well. The members were given the right of discussing the budget, of putting questions and supplementaries, of moving resolutions on matters of public interest and imposing alterations in taxation. They were, however, not given the right of voting the grants or moving motions of no-confidence. There were also some restrictions on their right of discussing financial matters. Certain heads of revenue and expenditure were not open even to discussion by the Members of the Council. The questions put by the Members or resolutions moved by them could also be disallowed by the President if he thought that they were not in public interest.

The Act raised the number of members of the Governor's Executive Council in Bombay, Bengal and Madras to four. It authorised the constitution of such Councils in Lt. Governor's provinces as well. Further, it permitted the appointment of Indians to the Governor-General's Executive Council and those of the Provincial Governors. Lord Sinha was appointed as the first Indian Law member on the Governor-General's Executive Council. Indians were also appointed to the Secretary of State's India Council.

#### **Working and Defects of the Act of 1909**

The Act of 1909 did not aim at establishing parliamentary government in India. In fact, Lord Morley expressly declared in the House of Lords at the time of the second reading of the Bill : "If I were attempting to set up a parliamentary system in India, or if it could be said that this chapter of reforms led directly or indirectly to the establishment



of a parliamentary system in India, I for one would have nothing to do with it."\* The aim of the reforms was only to associate some representative Indians in the task of legislation and administration and to see that a sort of constitutional autocracy was established in India. The authors of the Report on the Indian Constitutional Reforms of 1918 also summarised the intentions of this Act in the following words: "They hoped to blend the principle of autocracy derived from Moghul Emperors and the Hindu Kings with the principle of constitutionalism derived from the British Crown and Parliament to create a constitutional autocracy.....and a predominant and absolute power.....They anticipated that the aristocratic element in society and the moderate man, for whom there was then no place in Indian politics, would range themselves on the side of the Government, and oppose any further shifting of the balance of power and any attempt to democratize Indian institutes."† The Act abandoned the old concept of the Council functioning merely as a legislative committee of the Government and made it to serve the purpose of an inquest on the doings of Government, by granting its members the important right of discussing administrative matters and of putting questions to the Executive through a system of interpellations. The Act in so far as it recognized the need for increased representation and association of the people in the work of legislation and administration is a distinct advance on the Act of 1892. But it afforded no answer to the Indian political problems. It established a sort of benevolent despotism. Limited franchise and restricted powers of the Council failed to develop in the people a sense of responsibility. The Government of India continued to be essentially autocratic. It was administered by the Indian Civil Service recruited in England, whose members were out of touch with new ideas and new aspirations of the people. The British bureaucrats distrusted Indian nationalist leaders.

Though a few Indians were appointed to the Governor-General's Executive Council, they were a mere handful and were not given any responsible posts. The people were as far removed from the Government as they could be.

\*Lord Morley, *Indian Speeches*, p. 91.

†*Report of the Indian Constitutional Reforms 1918*, pp. 47-48.



The Councils elected on a very limited franchise were in no way representative of the people, nor did they enjoy any real measure of power or influence in the government of the country. The official members were not free to vote. They could not ask questions. The European members, the landlords and the Muslims supported the official block. The Councils were thus powerless ; they only registered the decrees of the Executive. The proceedings of the Council bore an air of unreality and its debates lacked life. The Government paid no regard to the views of Indian members on vital questions.

Another defect revealed from the working of the Act was that there was no direct contact between the members and their constituencies. This was due to restricted franchise and the indirect system of electing members. This fact is emphasised in the Report itself which says : "There is absolutely no connection between the supposed primary voter and the man who sits as his representative in the Legislative Council, and the vote of the supposed primary voter has no effect upon the proceedings of the Legislative Council. In such circumstances, there can be no responsibility upon and no political education for the people who nominally exercises a vote. The work of calling into existence an electorate capable of bearing the weight of responsible government is still to be done."

Another defect noticeable in the Act was a high degree of centralisation in administration. The Government of India did not relax its control over the Provincial Governments which had no executive sphere of their own. The Government of India directly administered not less than two-thirds of the entire revenues of the State. The Central Government exercised legislative and administrative control over the provinces, because all bills passed by the provinces required the assent of the Governor-General and because the Central Government issued instructions to the Provincial Governments in all vital matters of administration and exercised full control over public servants employed in the provinces. Again, the absence of decentralization deprived the local bodies of much of their utility. The local bodies remained officialized as before and people were not given any oppor-



tunity to manage their affairs without interference from the Centre. The worship of efficiency thus hindered progress towards self-government.

The introduction of separate electorates for Muslims was another major defect of the Act. It widened the gulf between the Hindus and the Muslims and eventually led the way to the partition of the country. Along with this there was provision in the Act for special representation of vested interests, thus obstructing the growth of national unity in the country.

Lastly, the reforms in the long run proved unworkable. The Montford report has summed up the position thus: "The Morley-Minto Constitution ceased in the brief space of 10 years' time to satisfy the political hunger of India. The new institutions began with good auspices and on both sides there was a desire to work them in a conciliatory fashion. But some of the antecedent conditions of success were lacking. There was no general advance in local bodies; no real setting free of provincial finance; and in spite of some progress no widespread admission of Indians in greater numbers into the public service".

Because the relaxation of parliamentary control had not been contemplated, the Government of India could not relax its control over local governments. The sphere in which the Councils could affect the Government's action, both in respect of finance and administration, was closely circumscribed. Again and again a local government could only meet a resolution by saying that the matter was really out of its hands. It could not find the money because of the provincial settlements; it was not administratively free to act because the Government of India was seized of the question; it could therefore only lay the views of the Council before the Government of India. Even in the field of local legislation, much of the real work was done behind the scene. Because of this disillusionment about the powers of the reformed Councils, the popular conventions, where speakers were free to attack the Government and give vent to their own aspirations untrammelled by rules of business or the prospect of a reply, naturally regained ascendancy. The line taken by the prominent speakers in such gatherings was to belittle



the utility of the Councils, if not to denounce them as cynical and calculated sham. The Councils thus ceased to satisfy any section of Indian opinion.

### Conclusion

Despite all the defects alluded to above in the working of the Act, the reforms constituted a step forward on the road to responsible government. They modified to some extent the bureaucratic character of the Government. The local Councils provided opportunities to representatives for political education. They demonstrated the high calibre of the non-official elected members for debate and putting up their case forcefully. Members not only made useful contribution to the framing of laws but also kept the executive on the alert. In the words of Lord Morley, the reforms may, therefore, be described as 'the opening of a very important chapter in the history of relations of Great Britain and India', and 'the turning over of a fresh leaf in the history of British responsibility to India.'

### Select Bibliography

- Montague* : Chelmsford Report on Indian Constitution.  
*Keith* : Speeches and Documents on Indian Policy Vol. II.  
*Morley* : Indian Speeches.  
*Shri Ram Sharma* : A Constitutional History of India Chapter, XV  
*Mukerjee* : Indian Constitutional Documents.  
*Morley* : Recollections, Vol. I p. 309, Vol. II.  
*G. N. Singh* : Landmark in Constitutional & National Development  
 Chapter XVI

## CHAPTER 4

### TOWARDS RESPONSIBLE GOVERNMENT (i)

(FROM 1909 to 1917)

The reforms of 1909 did not satisfy any section of Indian opinion. Even the moderates whom the reforms wanted to win over were not satisfied with them. The extremists, in any case, were most disappointed. Lord Morley's disclaimer in the House of Lords on December 17, 1908, that he did not propose to introduce parliamentary government in India was highly resented. The British Parliament retained ultimate control over the Government of India. The Members of the Imperial Legislative Council had no power over steel-frame bureaucracy. In the words of Lionel Curtis, Legislative Councils were based on 'a travesty of an electoral system'.\* They had opportunities of criticising the Government but none of controlling it.

Meanwhile the Government pursued its policy of repression with unabated rigour. The Press Offences Act of 1909 was placed permanently on the Statute Book and it completely gagged the Indian Press. A few months after, the Government brought forward a continuing Bill to extend the life of the 'Prevention of Seditious Meetings Act 1907' and passed it in 1911. The measure was strongly opposed by non-official members of the Indian Legislative Council as 'unnecessary, arbitrary and repressive'. So widespread were the feelings of resentment in the country that they gave a fillip to revolutionary activities and all the repressive legislations could not stop the tide. There were a number of contributory factors in their agitation. The insults and humiliation suffered by Indians in South Africa and the denial of the rights of citizenship to Indians in Canada and Australia added to this discontentment.

Such was the atmosphere when the first World war broke out in 1914. Although there was a generous response to war effort by Indian political parties, the revolutionaries opposed it in positive terms. The Defence of India Act was

\*Lionel Curtis : "*Dyarchy*" p. 367.



therefore, passed to combat their activities. The extremists joined the Home Rule League movement of Mrs. Annie Besant and followed a programme of boycott of British goods and promotion of national education. The Government tried to suppress this movement and sent a large number of persons behind prison bars.

### Proposals for Reform

In December 1914, Mr. S. P. Sinha as President of the Indian National Congress advised the Government to declare the goal of British policy in India with a view to pacifying Indian feelings. A number of practical proposals were put forward before the British Government at this time, suggesting solution of the Indian problem. Some of these were as follows :

(a) *Gokhale's Political Testament*.<sup>\*</sup> Lord Willingdon, the then Governor of Bombay, asked Mr. Gopal Krishna Gokhale to suggest to him a scheme of reforms which might satisfy Indian public opinion. The scheme was completed shortly before Mr. Gokhale's death in March, 1915: It provided for some sort of provincial autonomy but did not propose the transfer of responsibility to Indian hands.

(b) *Memorandum of the Nineteen*.<sup>†</sup> This memorandum was prepared by nineteen Indian members of the Imperial Legislative Council, including Pt. Madan Mohan Malviya, Mohammad Ali Jinnah and Sir Tej Bahadur Sapru. It proposed that (1) in all executive councils, Provincial and Imperial, at least half of the members should be Indians; (2) all Legislative Councils should have a substantial elected majority; (3) franchise should be broadened; (4) minorities should have due representation in the legislature; (5) the Secretary of state's Council should be abolished; (6) provinces should enjoy full measure of autonomy; (7) local self-government should be introduced immediately, and, (8) higher jobs in the army should be offered to Indians on the same conditions of service as the Europeans.

(c) *The Congress-League Scheme*. The Congress-League Scheme was formulated in December 1916 at a joint session

<sup>\*</sup>Keith, *Speeches and Documents on India Policy*, Vol. 2. pp. 111-116.  
<sup>†</sup>Coupland, *The Indian Problem, 1833-1935*, p. 52.



of the Indian National Congress and the Muslim League. Muslim loyalty to the British had been put to severe strain during the Turco-Italian War in 1911, the Balkan Wars in 1912 and during the First World War when Turkey sided with Germany against the allies. The Muslim League chastened by these international events turned in a friendly manner towards the Congress. The latter demonstrated its goodwill to the Muslims by conceding their demand for weightage and separate representation in return for their support to the Indian demand for self-government. A Congress-League Pact was drawn up. It recommended the enlargement of the legislatures in the major provinces to at least 125 members and in the minor provinces from 50 to 75. Eighty per cent of the members were to be elected directly on a wide franchise with weightage and special electorates for the Muslim community. It further recommended the introduction of provincial autonomy with division of heads of income and expenditure between the Centre and the provinces. The right of putting supplementary questions and the power of passing binding resolutions and Acts was also demanded.

The Congress-League Pact symbolised a new unity between the two communities, but this unity was secured by granting heavy concessions to communalism. The Congress committed a blunder by accepting separate electorates and the principle of weightage for the Muslims. The British Government made these proposals a basis for the Montford Reforms. Another defect of the Pact was that no provision was made for making the executive responsible to elected majorities in the legislatures:

(d) *The Duke Memorandum.* Another scheme prepared towards the end of 1915 was the one put forward by Mr. William Duke, who had been Lieutenant-Governor of Bengal, and was at this time also a member of the Council of the Secretary of State for India. The memorandum was written at the request of Mr. Lionel Curtis, the leader of the English Round Table Group—an Association of English public men interested in Indian problems. It suggested the introduction of dyarchy in India which meant that departments like Education and Local Self-Government, etc., were to be transferred



to popular control. Mr. Curtis, explained in a letter written to Sir Bhupendra Nath Basu, the then Member of the Indian Legislative Council, that his scheme of dyarchy meant the division of the Government into two parts, only one of which was to be responsible to the people. He said this was an essential intermediary step to full-fledged responsible Government.

(e) *The Announcement of August, 1917.* To win whole-hearted support of India in the successful prosecution of the war, the British statesman Mr. Montague, the newly-appointed Secretary of State for India, made a declaration of British policy on India on August 17, 1917. The announcement said: *'The policy of His Majesty's Government with which the Government of India are in complete accord, is that of increasing association of Indians in every branch of the administration, and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire.* They have decided that substantial steps should be taken in this direction as soon as possible. The statement went on to declare that *"progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be the judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility"*\*. The Secretary of State also announced at the same time the decision of His Majesty's Government to send him to India almost immediately for purposes of consultation and inquiry.

The August declaration is of great constitutional importance. Firstly, it recognized the right of Indians to govern their own country, which claim had been repudiated previously by Lord Morley. Secondly, all Indians were to be associated in all branches of administration, including the army. Thirdly, the announcement marked a progressive step towards further devolution of powers. Of course, the establishment of full responsible Government was still a far cry.

\*"Report on Indian Constitutional Reforms," 1918, p. 1



It was to depend on the extent of co-operation to be offered by Indians in the task of British administration.

The announcement of August 20, 1917 was received warmly by the moderates who welcomed it as 'the Magna Charta of India'. The extremists, however, regarded it as unsatisfactory both in language and substance. The authors of the Indian Constitutional Reform described it as 'the end of one epoch,' and the beginning of a new one'. In November, 1917, Mr. Montague accompanied by some of his colleagues came to India to begin the work of consultation and inquiry. Meanwhile Mrs. Besant, Messrs. Arundale and Wadde had been released to create a favourable atmosphere in the country for their reception. Mr. Montague toured the country along with Lord Chelmsford, the Governor-General, and met a large number of deputations.

(f) *The Curtis Scheme.* Among many representations submitted to him during his tour was a Memorandum drafted by Mr. Curtis, much on the same lines as the Duke Memorandum. It recommended the introduction of dyarchy in the provinces before the grant of full responsible government. It suggested the formation of smaller provincial states constituted on the basis of racial and linguistic considerations. It also suggested periodic commissions of inquiry to report to Parliament about further advance. Evidently, this scheme had a marked influence on the Montford proposals.

### **Montague-Chelmsford Report**

The Montague-Chelmsford Report was submitted to the British Cabinet in July 1918. In this report, while a partial transfer of responsibility was recommended in the provinces, no such recommendation was made in respect of the Centre. The latter was to continue as irresponsible as before. In the provinces, the government was to be divided into two parts—one Reserved and the other Transferred. The reserved departments were to consist of: Law and Order, Finance, Justice and Jails. They were to be administered by the Governor-in-Council, *i.e.*, the Governor acting on the advice of his Executive Councillors. The latter were to be his nominees not responsible to the legislature. The transferred departments were to consist of Local Self-Government, Education, Medical Aid, Sanitation, Agriculture, Public Works,



etc. They were to be administered by the Governor acting on the advice of his Ministers. The latter were to be responsible to the elected members of the provincial legislature. The Governor was to enjoy an overriding authority over legislation.

The Report also recommended the need for financial devolution. It suggested separate heads of income and expenditure for the Central and Provincial Governments. To meet the deficit of the Central Government, it suggested provincial contributions to the Centre. The Report also recommended that the local self-governing bodies—municipalities and district boards—should become autonomous elected bodies, entirely free from official interference. The report proposed the extension of franchise and an increase in the number of elected representatives to the legislatures. Regarding communal electorates, it not only recommended their retention for the Muslims, but proposed their extension to the Sikhs. Lastly, the Report recommended the formation of a Chamber of Princes for Indian States to be placed in direct contact with the Government of India.

The publication of the Montford Report gave a rude shock to Indian public opinion. It received universal condemnation except from the Moderates and Anglo-Indians. Mrs. Besant in her book, "New India", wrote that the scheme was 'ungenerous for England to offer and unworthy for India to accept'.

### **The Government of India Act 1919**

The Montford proposals formed the basis of the Government of India Act of 1919. A bill embodying these recommendations was introduced in the British Parliament on June 2, 1919 and passed by both the houses on December 18, 1919. It received the royal assent on December 23, 1919. The Act came into force on April 1, 1921. It remained in force in the provincial sphere till 1937, and in the Centre till 1946. The Act had the following main features:—

(1) It introduced a dyarchical form of administration in the provinces by dividing the government into two parts, one Reserved and the other Transferred. The reserved subjects were Land Revenue, Famine Relief, Justice, Police, Prisons,



Factories, Electricity and Finance, while the transferred subjects were Local Self-Government, Education, Public Health and Agriculture. The reserved subjects were administered by the Governor and his Executive Councillors who were appointed by the Crown on the advice of the Secretary of State for India for a term of five years. The Executive Councillors were only answerable to the Governor and not responsible to the Legislature. Transferred Departments were administered by the Governor with the aid of Ministers, who were responsible to the Legislature and could be turned out of office if they ceased to enjoy its confidence. They could also be removed by the Governor at his pleasure.

(2) The Act provided for the devolution of legislative authority by the Centre to the Provinces. This greatly modified the unitary character of the old Constitution. It specified a separate field of legislation for the Provinces and the Centre. The Centre was assigned 47 subjects including defence, external affairs, relations with States, excise, civil and criminal law, production of essential commodities and development of industries. The Provincial list included 51 items such as Local Self-Government, agriculture, fisheries, public health, medical aid, education, land revenue, irrigation, public works, justice, registration of documents, elections, the Press, etc. Residuary powers of legislation were vested in the Central Government which was also given the powers of concurrent legislation.

(3) The heads of income and expenditure between the Centre and the Provinces were also laid down. The Provinces were given the power of levying fresh taxes and of framing their own budgets, subject to the provision of giving information to the Government of India on certain points. They were also required to make a contribution to the Centre to make up its deficit.

(4) The Act also enlarged the size and functions of the provincial legislatures. They were to be known as Legislative Councils and were given greater control over the administration. Seventy per cent of their members were to be directly elected and the proportion of official members was not to exceed 20 per cent. The rest of the members were nominated by the Governor with a view to providing



representation to various other groups. The strength of the members in the various provinces was fixed as under.

Madras 132; U. P. 123; Assam 53; Bengal 140; Bombay 114; C. P. 73; Bihar 123; Punjab 94.

The Councils were elected for 3 years, subject to earlier dissolution by the Governor. They could frame laws for the peace and good government of the Province, subject to the assent of the Governor and the Governor-General. They were given the right of vote on certain items of the budget, although the Governor was empowered to restore the demands refused by the Council. The Legislature could not discuss and vote on non-votable items of expenditure such as provincial contribution to the Central Government, debt charges, expenditure provided by law, emoluments of persons appointed by His Majesty or the Secretary of State, High Court Judges, and the Advocate-General. The members of the Council were given the right of putting questions and supplementaries and of moving adjournment motions to discuss important public matters. They could not, however, put questions relating to the powers of the Governor or India's relations with foreign States or native princes and on *sub-judice* matters.

The Governor was armed with extraordinary and excessive powers. He could override his Executive Council and also the Ministers. He was also empowered to take over the administration of the transferred subjects in the event of a breakdown of the constitutional machinery of the Provincial Government.

(5) The Act also introduced important changes in the Home Government. According to the 1909 Act, the salary of the Secretary of State for India and his staff was paid out of Indian revenues. The new Act provided that henceforth this would be a charge on the British Exchequer. The result of this constitutional change was that the Secretary of State came more directly under the scrutiny and control of the British Parliament. At the time of the presentation of the budget in Britain, Indian affairs began to receive closer attention of the Parliament. Again, the control of the Secretary of State over the Transferred subjects of the provincial Government became less and less rigid.



The Act of 1919 also made provision for the appointment of a High Commissioner for India in Great Britain. He was entrusted with the duty of placing contracts and making purchases of stores required by the Government of India from outside. He was also to look after the welfare of Indian students studying in Britain.

(6) The new Act introduced some changes in the structure of the Central Government also. The executive, no doubt, remained responsible to the British Parliament as before, but the Central Legislature was made more democratic. It was made bi-cameral with an Upper and a Lower House to be known as the Central Legislative Assembly and the Council of State, respectively. The latter was to consist of 60 members out of which 33 were elected and 27 nominated by the Governor-General. The Central Legislative Assembly was to consist of 145 members, out of which 103 were elected and the rest nominated. Of the latter 25 were officials and the rest non-officials. Out of 103 elected members, 51 were elected by general constituencies, 32 by communal constituencies (*i. e.*, 30 by Muslims, two by Sikhs), and 20 by special constituencies (Seven by landholders, Nine by Europeans, and four by Indian Christians). The term of the Assembly was fixed at three years and that of the Council of State at five years. But this could be extended by the Governor-General. The last Assembly lasted for 11 years. The first Speaker of the Assembly was nominated by the Government, but subsequent speakers were elected by members of the Assembly.

Both the Houses of the Central Legislature were elected directly, though on a restricted franchise. The qualifications of voters for the Council of State were higher—only those who paid income-tax on an annual income of not less than Rs. 10,000 or were assessed to land revenue of at least Rs. 750 were entitled to vote. In the case of voters of the Central Assembly the qualifications were : payment of municipal tax amounting to not less than Rs. 15 per annum, tenant or owner of a house of an annual rental value of at least Rs. 180 or an income tax assessee on an annual income of not less than Rs. 2,000 or landlord paying a land revenue of at least Rs. 50 per annum. There were 14,16,000 voters in the country in 1934 who were enrolled in general territorial cons-



tituencies or in communal electorates. Minorities were given weightage both at the Centre and in the provinces.

The Central Legislature was given wide powers. It could make laws for the whole of India and could amend or repeal laws already in force. However, previous sanction of the Governor-General was necessary for the introduction of bills concerning the following subjects : (1) Public debt or public revenues of India ; (2) Religious rites and usages of British subjects in India ; (3) Discipline or maintenance of His Majesty's military, naval or air forces ; (4) Relation of the Government of India with foreign States ; (5) Any measure which sought to repeal or amend any Act or legislation made by the Governor-General ; (6) Any legislation abolishing any High Court. In addition, the Governor-General was given the power of preventing the consideration of a bill or a part of a bill in any chamber if in his opinion it affected the safety or tranquillity of British India or any part thereof. The Governor-General was empowered to enact laws if he considered them necessary for the safety, tranquillity or interests of British India. He could also issue ordinances lasting six months. He could give his assent or dissent to any bill passed by the Legislature.

The Government had to lay before the Central Assembly an annual statement of revenue and expenditure. It was not empowered to discuss or vote upon certain items of expenditure such as interest and sinking fund charges, statutory expenditure, the salaries and pensions of the services appointed by the Secretary of State or the King, and expenditure on the ecclesiastical, political and defence departments. These constituted non-votable items and accounted for more than four-fifths of the total budget of the Central Government. Other items of expenditure were submitted to the vote of the Assembly which could give or refuse to give its assent to them or refuse any particular demand. The Governor-General was empowered to restore a grant rejected by the Assembly. He could also certify bills rejected by the Assembly.

The Act established a responsive but not a responsible Government at the Centre. The Governor-General's Execu-



tive Council consisted of seven nominated members\* out of which three members were customarily Indians. It was responsible to the Secretary of State and not to the Legislature and could not be overthrown by an adverse vote of the latter. Nevertheless, the members of the Legislature could criticise the Executive and censure it through adjournment motions, etc. It cannot also be denied that at times the members of the Government responded to the wishes of the Legislature.

The Central Government exercised jurisdiction over a number of subjects of all India importance such as defence, foreign relations, customs, Indian States, emigration, naturalization, shipping, navigation, Railways, Post and Telegraphs, Currency, and Exchange, census, Ecclesiastical Department, scientific surveys, civil and criminal law, public services, commerce, etc. It also administered directly the Chief Commissioner's provinces, *viz.*, Delhi, Ajmer, British Baluchistan, Coorg and the Andamans. As regards the Provincial Administration, it exercised a general power of direction, superintendence and control. In relation to reserved subjects this power was complete, but in transferred subjects its interference was limited to problems relating to the public services, inter-provincial disputes and administration of central subjects.

(7) In the end, the new Act widened the electorate for the Provincial Councils so that one-tenth of the adult male population secured the right to vote. The country was, however, divided into general, communal and special constituencies as for the Central Legislature. The general constituencies represented the Hindus. Exclusive communal electorates were set up for the Muslims, the Sikhs in the Punjab, Indian Christians in Madras, Europeans in Madras, Bombay, Bengal, U. P. and Bihar, and for Anglo-Indians in Madras and Bengal. The Universities, trading bodies and landlords were given special constituencies. The various communities such as Muslims, Indian Christians, Anglo-Indians and Europeans were granted weightage or representation in Legislature much in excess of their population and voting strength.

\*They were appointed by the British Crown on the advice of the Secretary of State.



**Dyarchy—Its meaning and working**

*Meaning.* Dyarchy is a compound of the two Greek words *di* meaning twice + *archie* meaning rule. The word came into use in India with the advent of the Montford Reforms which divided provincial Government into two parts: (i) one consisting of the Governor and his Executive Council, dealing with the reserved subject—Police, Justice, Jails, Finance, Land Revenue, Irrigation, Public Services, and (ii) the other consisting of the Governor and his Ministers who held charge of the Transferred departments—Education, Agriculture, Local Self-Government, Medical Aid, Co-operation, Excise, Industries, etc. The two-halves of the Government were separate and distinct, each being independent of the other, but it was contemplated that they would act in consultation with each other.

The British Government was not prepared to introduce full-fledged responsible government, even in the provinces, in a single stride. It wanted to do so in instalments, after it was established that those to whom power was transferred were qualified for the assumption of further power. The British Parliament was to be the sole judge of determining the time and manner of this transfer.\*

*Working of Dyarchy.* Dyarchy was introduced in India in 1921. But it had its inauguration under the most inauspicious stars, for, from the very beginning, it had to reckon with the opposition of the most popular political party in the country, *viz.*, the Indian National Congress. The latter fought the elections under the new constitution with a view to wrecking it from within and creating deadlocks in the day-to-day working of the Government. The result was that the constitutional machinery of the Government broke down in C. P. and Bengal in the years between 1924 and 1927, and again for some months in 1929. In the rest of the pro-

---

\* The system of dyarchy is based on the idea of progress by stages. This is recognized in Section 84-A of Government of India Act of 1919 according to which a commission within 10 years of the passing of the Act would report 'as to whether and to what extent it is desirable to establish the principle of responsible Government, or to extend, modify, or restrict the degree of responsible Government then existing therein'.



vinces there were frequent deadlocks between the Governor and the Ministers, the former taking over the administration of the transferred subjects under emergency provisions of the Government of India Act. During the period between 1921 and 1937, when the new Government of India Act of 1935 came into operation, four general elections were held in the country in 1920, 1923, 1926 and 1929-30. These helped to create political consciousness among the people and gave an opportunity to 93 members of different legislatures to act as Ministers and to 121 persons to act as Executive Councillors. On the whole, however, the experiment of dyarchy proved a complete failure. The reasons were as follows :—

(1) Dyarchy was introduced in India at a time when the country was seething with political discontent due to events following the deplorable massacre at the Jallianwala Bagh on April 13, 1919. Mahatma Gandhi and other national leaders having lost faith in the sincerity of the British Government to transfer power into Indian hands launched a series of countrywide civil disobedience movements in 1921, 1930 and 1932. The successful working of the reforms depended upon the goodwill and understanding of the people. This was totally lacking.

(2) In 1923 the Congress formed the Swarajya Party under the leadership of Mr. C. R. Das and Pt. Motilal Nehru. Its main object was to wreck the constitution from within. The party entered the Councils to follow a policy of obstructionism and to make the working of the constitution impossible. It succeeded in wrecking the constitution in two provinces, *viz.*, the C. P. and Bengal. In others it created frequent deadlocks leading to the assumption of authority by the Governors under emergency provisions of the Act.

(3) The scheme proposed arbitrary division of administration into two parts. This was opposed to all principles of political theory and practice. The State, being an organism, it could not be divided into rigid compartments. Again, the basis of division itself was faulty. Mr. K. V. Reddy, a Minister in Madras, has described the awkward situation that developed due to artificial division of power in these words : "I was Minister for Development in Madras without Forests. I was Minister for Agriculture minus Irrigation. I



was Minister for Industries without control over factories, boilers, electricity, water power, mines, labour, all of which were reserved subjects". There was no co-operation between the two halves of the government and this made the successful working of the government difficult.

(4) The Governor exercised his powers in a most autocratic way.\* He did not encourage the principle of joint responsibility and appointed Ministers individually at his own discretion. He treated them as his advisers whose counsels he was empowered to disregard. The Ministers did not feel any sense of responsibility. They had to serve two masters—the Governor and the Legislature. Their allegiance to the Legislature was weakened because of lack of a stable majority in the House and because of the presence of a solid block of officials and nominated members who constituted about 30 per cent of the total strength of the House. On this solid block they frequently leaned for support. In 1927 even though the majority of the elected members of the Madras Legislature voted against a Minister, the vote of censure failed because of the Governor's support. The pernicious practice of appointing Ministers on the expiry of their term of office to the lucrative posts of Executive Councillors also undermined the independence of the Ministers. The Raja of Pangal openly said on the floor of the Madras Legislature that he was only responsible to the Governor and to none else. The Ministers could not maintain their independence unless they were prepared to resign.

(5) The Ministers did not function as a team, collectively responsible to the Legislature. They were chosen by the Governors without any regard for political homogeneity. They were only heads of departments and not a part of the cabinet. Often they expressed conflicting views on the floor of the House which was contrary to the practice of cabinet

---

\*Prof. Balkrishna writes: "The extraordinary powers of the Governor for controlling the whole Executive for safe-guarding the interests of the services, for passing legislation and for vetoing Bills passed by it, for allocation of agreements and for restoring grants refused by the legislature, have sapped the independence and sense of responsibility of the legislatures and the Ministers". (Balkrishna—*Indian Constitution*) Vol. 2 p. 366.



Government.\* Again the resignation of any one particular Minister did not involve the resignation of the entire Ministry. In Madras two Ministers resigned on the question of co-operation with the Simon Commission in 1927, and in Bengal a Minister resigned on the issue of primary education in 1930, but each time the Governor reconstituted the Ministry by making fresh appointments. The Governors consulted the Ministers individually and on many occasions overrode their decisions.

(6) Another cause of the failure of dyarchy was the absence of organized political parties in the country and the existence of a large number of splinter groups held together by self-interest and not on the basis of any fundamental principles of policy. Ministries formed from sectional and communal groups naturally lacked cohesion as they worked not for furthering public interest but for fulfilling their own selfish ends. The result was that Ministers could not develop a sense of collective responsibility which is a prerequisite to the success of parliamentary government. The machinery of dyarchy itself was not suited to the growth of the party system. The Ministers did not associate themselves with a party if it opposed the Executive Councillors.

(7) The lack of a co-operative attitude on the part of the permanent civil services with the Ministers was also an important cause of the failure of dyarchy. The Ministers had no control over the civil servants whose appointment, salary, suspension, dismissal and transfer were determined by the Secretary of State for India. The members of the Imperial services had direct access to the Governor. They did not care much for the Ministers, who did not exercise any departmental control over them. Mr. C. Y. Chintamani, who served as a Minister, in the United Provinces, said: "While the Montague Act was not inherently bad and would have achieved gratifying results in favourable circumstances, actually it failed because of the combined unwisdom of the high Tory bureaucracy and ultra-radical or semi-revolutionary Congress".†

\*In Bengal Surendra Nath Banerjee and his Muslim colleague pulled in different directions over the Calcutta Municipal Bill.

†Chintamani & Masani, *India's Constitution at Work*, p. 7.



(8) The existence of a joint purse for the reserved and the transferred departments and its control in the hands of an Executive Councillor responsible to the Governor was another contributory cause for the failure of the experiment. The Finance Member first met the requirements of the Reserved Departments and then if there was any left over, it was allowed to the Transferred heads. The result was that the nation-building activities were starved of money.

(9) The provincial contributions to the Central Government as fixed by the Meston Award, to wipe out the deficit of the latter, also hit the provinces hard. Due to lack of finances, the transferred departments of the provinces could not carry out their schemes of expansion. These contributions were abolished in 1928 but the finances of the provinces could not improve due to economic depression which set in about this time. This difficulty has been aptly summarised by A. B. Keith thus : "The financial anomalies under Dyarchy proved the essential unreality of talking about responsible government, when Ministers were not effectively in control of any side of finance."\*

In the end, it may be said that although the reforms were put into operation for 16 years, they failed to fulfil their primary purpose of training people in responsible Government. As Prof. R. Coupland writes, "The new Constitution failed to fulfil its author's primary purposes. It did not provide a training in parliamentary government and it did not bring about a subordination of communal allegiance and antagonism to the common public interest."†

### Conclusion

The working of dyarchy demonstrated the fact that there was no half-way house between full responsibility and complete autocracy. Dyarchy proved unworkable because it sought to harmonise two irreconcilable authorities—one popular and elective, and the other official and non-elective. Between these two sets of authorities there was constant friction. The Legislative Council was given the power of influencing the Reserved half, but none of controlling it. The authority of

\*Keith, *Constitutional History of India*, p. 278.

†Reginald Coupland, *India, a Restatement*, p. 121.



the popularly elected Ministers was limited by the overriding powers of the Governor, the Governor-General and the Secretary of State for India. Dyarchy could only work under conditions of goodwill, understanding and mutual co-operation. Unfortunately, all these qualities were utterly lacking.

However, it should not be supposed that the Reforms of 1919 did not serve any useful purpose. They brought about an important change in the outlook of people. For the first time a large number of people were granted the right to vote. Elections provided the people with valuable political education. The size of legislatures was enlarged and they were democratically constituted, as four-fifths of their members were elected. The legislatures were given the power of framing their own rules of business and of framing laws, subject, of course, to approval by the Governor. Ministers were given opportunities of managing the affairs of the transferred departments and they were able to initiate some useful schemes. The association of Indians in legislation and administration developed in them a sense of responsibility and capacity for self-government. The presence of Indian Minister as heads of important departments increased the pace of Indianisation in the services. A profound psychological change in the minds of ordinary people who became familiar with the activities of their popular government was also brought about. These were considerable gains and they could hardly be ignored or underestimated.

### Select Bibliography

- Lionel Curtis* : Dyarchy  
*Chintamani & Masani* : India's Constitution at Work  
*Cospland* : The Indian Problem 1833-1935. pp. 1-121.  
*C. Y. Chintamani* : Indian Politics since the Mutiny, pp. 1-250  
*A. B. Keith* : A Constitutional History of India, pp. 200-278  
*Sri Ram Sharma* : A Constitutional History of India : Chapters XVI & XVII-pp. 152-195.  
 Report of the Reforms Enquiry Committee, 1924. Government of India publication.  
 Reports of the Local Government on the working of the Reformed Constitution, Volume 2.  
 Report on Indian Constitutional Reforms, 1918  
 Government of India Act 1919.  
*Dr. A. Appodurai* : Dyarchy in Practice.



## CHAPTER 5

### TOWARDS RESPONSIBLE GOVERNMENT (ii)

From 1919 to 1935

The Montford Reforms for 1919 were highly unsatisfactory. The Indian National Congress described them as 'inadequate, unworkable and disappointing' and asked the British Government to take early steps to establish full responsible government in India. The authors of the Reforms also regarded them as of transitional importance. They had laid down that ten years after the inauguration of reforms, a Statutory Commission would be appointed to inquire into their working and to suggest steps for further advance.

#### **The Muddiman Committee**

The British politicians believed that there was considerable scope of reform within the provisions of the 1919 Act and that this could be done through the rule-making powers of the Governor-General. A Committee known as the Reforms Enquiry Committee presided over by Sri Alexander Muddiman was, therefore, appointed to inquire into the working of the 1919 Constitution and to suggest reforms within the scope of the Act. The Committee was not able to make unanimous recommendation. The majority report presenting the Government view pointed out that the reforms proved a failure, because people in general were too backward to shoulder the responsibility of a democratic government. Nevertheless, it suggested relaxation of power of White Hall over provincial governments, emphasized the need for fostering a sense of joint responsibility in the ministries, advocated a re-arrangement of the Devolution Rules, and Proposed a revision of the Meston settlement, etc. The minority report submitted by the Indian Members of the Committee declared that dyarchy was a failure and that there should be a wholesale change in the constitutional structure of the country.

#### **The Simon Commission**

As the Muddiman Committee was unable to pacify Indian feelings, another Statutory Commission of six members



under the chairmanship of Sir John Simon was appointed in November 1927 to enquire into the working of the reforms and to suggest further steps that could be taken. The Commission was boycotted in India because its personnel did not include a single Indian. It nevertheless proceeded with its task and submitted its report in 1930.

The Commission recommended the abolition of dyarchy and suggested transfer of all powers of administration in the province to Ministers responsible to their legislatures. It declared that "each province should as far as possible be the mistress in her own house".

*Ministry.* Regarding the formation of ministries in the provinces, the Commission recommended that with the exception of the portfolio of law and order, the Governor should appoint ministers from amongst the elected members of the legislature to be in charge of all other portfolios. The ministers' advice should be binding on the Governor except in certain specific matters relating to prevention of grave menace to peace and tranquillity, protection of the interests of minorities, and securing the fulfilment of orders of the Governor General or Secretary of State.

*Legislature.* Regarding reforms in legislature, the Commission recommended the enlargement of the size of legislatures in major Provinces and an extension of their term to five years. It, however, suggested the continuance of separate electorates, though on the basis of an extended franchise of about 20 per cent of the adult population. Further, it recommended abolition of the official blocs in the legislatures. The legislatures were also given the power to modify their composition and procedure of work by a two-thirds majority.

*Central Government.* In dealing with the Centre, the Report stressed the need of preparing the way for a federation. The Central Legislature was to be refashioned on the federal principle. The Federal Assembly was not to be directly elected by the people but by the Provincial Assemblies. To the Council of State each Province was to elect three members. The Central Cabinet was to continue as a nominated government, not responsible to the legislature. The



Report stressed the need for keeping the Centre strong and stable. It said, while the experiment of responsible government could be carried on in the provinces, the Central Government could not be trusted to carry on this responsibility without adequate safeguards and a period of sustained training.

*Relations between the Centre and the Provinces.* It was recommended that the Governor-General must have powers to superintend, direct and control the Provincial Governments.

*The Services.* The Commission recommended that the recruitment to All-India Services must continue through the Secretary of State in consultation with the Central and Provincial Governments. The protection of the interests of such services was to be the special responsibility of the Governor.

*Finance.* The Commission accepted the report of Sir Walter Layton in the matter of provincial finances. It agreed that there should be separation of heads of revenues between the Provinces and the Centre. It also suggested allocation to the provinces of a substantial share of Income-tax and salt tax.

*Estimate of the Report.* The Simon Commission Report, according to P. E. Roberts, 'will stand out as one of the greatest of Indian State papers.\*' Sir Arthur Keith regarded the proposals as 'the quickest way to responsible government missed by Indians.†'

The Report, however, proved most unpopular in India. It was bitterly criticised because it retained the autocratic features of the previous regime, *viz.*, no responsibility at the Centre, Imperial control over the army and defence, and the Crown's paramountcy over the Indian States. In regard to provinces also it did not provide for full responsibility. The powers of the Ministers were seriously circumscribed by the special responsibilities of the Governor. Central control over provincial governments remained as rigid as before. Further the Report limited franchise to only 20 per cent and retained the vicious principle of communal electorates. Nationalist

\*"British India," p. 598

†Keith, *Constitutional History of India*, p. 249.



opinion in India, therefore, condemned the Report as reactionary.

### The Nehru Report

While the Simon Commission was touring the country, the Conservative Secretary of State for India, Lord Brikenhead hurled a provocative challenge to the people of India that they were unable to produce an agreed Constitution due to communal quarrels. The Indian National Congress took up the challenge and an All-Parties Conference under the chairmanship of Pandit Motilal Nehru was summoned at Allahabad and it submitted its report in 1928 proposing a scheme of dominion self-government for India.\* It held that (1) the Indian Constitution should be based on full responsible government on the model of self-governing Dominions; (2) complete provincial autonomy should be guaranteed; in other words, the Governor should be bound by the advice of the provincial Cabinet; (3) communal electorates should be abolished and joint electorates with reservation of seats for minorities should be arranged; (4) the Provinces should join an All-India Federation on the condition that they establish democratic government in the States; (5) the civil services should be brought under the control of the legislature, and (6) a declaration of fundamental rights should be made in the Constitution.

*Estimate of the Report.* 'The Nehru Report was not only an answer to the challenge that Indian nationalism was unconstructive; it embodied the frankest attempt yet made by Indians to face squarely the difficulties of communalism.†

The Committee made a bold attempt to deal with the communal problem which 'cast its shadow over all political work'. It pointed out that the minority community in India was afraid of being domineered by the majority. To meet this difficulty, it suggested that the rights of the minorities be guaranteed in the Constitution and they be granted cultural autonomy.

---

\*Report of the Committee to determine the principles of the Constitution for India, A. I. C. C., Allahabad (1928).

†Coupland, "The Indian Problem", Part I., p. 8



Accordingly, the following proposals were made :—

(1) A declaration be made in the Constitution guaranteeing liberty of conscience and religion to all citizens;

(2) The North-West Frontier Province (with a Muslim majority of 90%) be accorded the same status as other provinces;

(3) Sind (with a Muslim majority of over 70%) be separated from Bombay and made a separate Province.

(4) Separate electorates be abolished, as they violated the essential principles of responsible government and failed to pave the way to a better understanding between the communities. Instead, joint electorates, with reservation of seats for minorities in strict proportion to the size of the community, be provided.

#### Fourteen Points of Jinnah

The Congress Working Committee accepted the Nehru Report as 'a great step towards political advance'. Mr. Mohammad Ali Jinnah and the Muslim League, however, rejected it. The former issued his famous 14 points for safeguarding the rights and interests of Muslims. These points have been summarised by Dr. Rajendra Prasad as follows :—(1) The form of the future Constitution should be Federal, with residuary powers vested in the Provinces; (2) The Provinces should be made fully autonomous; (3) All legislatures and other elected bodies should be constituted on the definite principle of adequate and effective representation of minorities in every Province without reducing the majority in any Province to a minority; (4) In the Central Legislature Muslim representation should be not less than one-third; (5) Communal groups should be represented in the legislatures through separate electorates, provided that it should be open to any community at any time to abandon the separate electorates in favour of joint electorates; (6) Any territorial redistribution should not in any way affect the Muslim majority in the Punjab, Bengal, and the N.W.F.P.; (7) Full liberty of belief, worship and observance, propaganda, association and education be guaranteed to all communities; (8) No Bill or Resolution or any part thereof be passed in any legislature or any other elected body, if three-



fourths of the members of any community in that body oppose it as being injurious to the interests of that community; (9) Sind be separated from Bombay Presidency; (10) Reforms be introduced in the Frontier Province; (11) Adequate share for Muslims be provided in the constitution of all services, subject to requirements of efficiency; (12) Adequate safeguards be provided for the protection and promotion of Muslim culture, education, language, religion and personal law; (13) No Cabinet either Central or Provincial be formed without at least one-third of the Ministers being Muslims; (14) No change in the Constitution be made by the Central Legislature except with the concurrence of the States constituting the Indian Federation.\*

#### First Round Table Conference (November 12, 1930 to Jan. 19, 1932)

While the political deadlock in the country was continuing over the acceptance of the Nehru Report, the British Government decided to convene a Round Table Conference in London of the representatives of British India, Indian States and British politicians to frame the new constitution of India on the basis of the report of the Simon Commission. The Indian National Congress did not participate in this first Conference as it insisted that the agenda of the Conference should include the framing of a Dominion Constitution for India. The British Government did not accept this demand. The Conference, however, met as scheduled and it agreed on three matters, *viz.*, that (1) an All-India Federation be formed with the co-operation of the native States, (2) Provincial autonomy be introduced, and (3) Safeguards be provided in the provinces as well as in the Centre in the interests of England and India.

#### Second Round Table Conference (September 7 to December 18, 1931)

The Second Round Table Conference followed the Gandhi-Irwin Pact. Mahatma Gandhi participated in this Conference as the sole representative of the Congress. But by the time this Conference assembled, the Labour Government had quit office, and was succeeded by a so-called National

\**India Divided*, pp. 131-132



Government of which Mr. Ramsay Macdonald continued to be head, though the Conservative Party was the dominant partner. Mr. Wedgwood Benn, the Secretary of State for India, a liberal and just-minded politician, was succeeded by Sir Samuel Hoare, an extremely obdurate and diehard politician. This Conference failed to solve the communal tangle because of the uncompromising and obstinate attitude of the Indian communal leaders. Encouraged by the British Conservatives, they put every obstacle in the way of a reasonable settlement of the communal problem. The result was that the Conference failed to achieve any results and Mahatma Gandhi had to return to India as a much disgusted and disillusioned man.

#### Communal Award (August, 1932)

As the Indian leaders failed to arrive at a settlement regarding the distribution of seats in the legislatures among the different communities, the British Prime Minister, Mr. Ramsay Macdonald, issued his famous Communal Award on August 19, 1932. This declaration provided that 'if the Government were satisfied that the communities concerned were mutually agreed upon an alternative scheme, they would be prepared to recommend to Parliament that the alternative should be substituted for the provision outlined in the Communal Award.'\*

*The Award.* The Award retained separate electorates for the minority communities and also for the Muslims in Bengal and the Punjab even though they were numerically in majority in those provinces. 'Weightage' was conceded to the Muslims in provinces in which they were in a minority and also to the Sikhs and Hindus in the Punjab. About 3% of the seats in each Provincial Legislature except in the North-West Frontier Province were reserved for women. These were divided among the various communities. The Depressed Classes were recognised as a minority community entitled to separate electorates with an additional vote in the general constituencies. Indian Christians and Anglo-Indians were also given the right of separate electorates. Special

---

\*Rajendra Prasad, *India Divided*, p. 136.



seats were allotted to labour, commerce, industry, mining and planters, etc., to be filled in by their respective associations.

### **The Poona Pact (September 1932)**

The Communal Award sought to dismember the Hindu community by conceding the right of separate electorates to the Harijans. Mahatma Gandhi protested against this unjust dismemberment and wrote a letter in March 1932 to Sir Samuel Hoare, Secretary of State for India, warning him that he would resist the grant of separate electorates to the depressed classes with his life. This letter had no effect on the British Government and so in protest Mahatma Gandhi undertook a fast unto death. When his condition grew serious, Indian leaders decided to get the award modified by mutual agreement between the leaders of depressed classes and those of caste Hindus. Ultimately, an agreement known as the Poona Pact was arrived at and it was duly signed in September, 1932.

The Poona Pact reserved seats for the depressed classes out of the quota of general seats in the provincial legislatures as follows : Madras 30, Bombay with Sind 15, the Punjab 8, Bihar and Orissa 18 ; the C. P. 20, Assam 7, Bengal 30, the U. P. 20. The total number of seats reserved for the depressed classes was 148. This was far in excess of the original number of seats provided for them under the Macdonald Award. Election to these seats was to be conducted in two stages. In the preliminary election the scheduled Caste voters were to elect a panel of four candidates for each seat reserved for them. In the final election the candidate getting the first place in voting by joint electorate was declared elected for the seat. In addition, Harijans were given an additional vote in the election for general seats not reserved to them.

*Defects of the Poona Pact.* The Pact gave undue representation to Harijans in the legislature and, in particular, caused grave injustice to Caste Hindus in the province of Bengal. In that province, out of a total strength of the House of 250 members, the number of general seats was 80. The Poona Pact reserved 30 seats out of 80 for the depressed classes,



and in addition gave them the right to contest more seats, if they so desired, in the general constituencies. This representation was not at all justified by their population strength.

*Defects of the Communal Award.* The Communal Award of Mr. Ramsay Macdonald was no award at all. As Mr. M. R. Masani writes : "An award presupposes arbitration and arbitration is a process voluntarily resorted to by free and equal parties. In the present case, there was no voluntary submission of the dispute to the Premier. Even if the delegates to the Round Table Conference had signed such a reference, considering that they were themselves the nominees of the arbitrator (the British Government), their competence to bind their respective communities would have been plainly open to question. As a matter of fact, there was not even such a submission to arbitration." The solution provided by the Communal Award was worse than the disease as it cut up India into a dozen minority communities and rendered any just solution of the problem of a united India difficult. According to Mr. Mehta and Mr. Patwardhan, 'the Communal Award fragmented the electorate into seventeen unequal bits and accorded separate representation to women and Indian Christians against their wishes.\*

The Award was grossly unfair to the Hindus, mainly of Bengal and the Punjab, where they happened to be in a minority. In Bengal, the Hindus constituted 44.8 per cent of the total population; yet out of 250 seats in the Provincial Legislature only 80 seats were given to them as against 119 to the Muslims. Europeans, who were only .01 per cent of the population, were given 25 seats. Hindus and Sikhs as minority communities were not given the same weightage in the Punjab as was accorded to the Muslims in other provinces where they were in a minority. In contrast, the Indian Christians, Anglo-Indians and Europeans were given 300 per cent 3000 per cent and 25000 per cent weightage, respectively.

The Award was condemned by the bulk of nationalist opinion in India. It was regarded as a clever Machiavellian device of the British Government to widen the already

---

\*Mehta & Patwardhan, *Communal Triangle*, p. 72.



existing gulf between the sister communities. It embodied the application of the principle of *divide et impera* to suit the interests of an alien government.

### **Third Round Table Conference (Nov. 17 to December 24, 1932)**

The third session of the Round Table Conference was attended by reactionary elements, the Labour Party having already withdrawn its support to the Conference. It discussed a fixed agenda and reaffirmed the decisions already made in regard to the outline of the future political set-up of the country.

### **The White Paper (March 18, 1933)**

In March 1933, the Government issued a White Paper embodying the conclusions reached in the Round Table Conferences, further whittled down to satisfy the Conservative Party's wishes. These proposals were so reactionary that they were rejected by all political parties.

### **The Joint Parliamentary Committee Report**

The proposals of the White Paper were presented in the form of a Bill to the Parliament. The latter appointed a joint Select Committee of the two Houses aided by a few Indian witnesses, to examine them. The Indian delegates presented to the Committee two memoranda in which they stated the very minimum changes in the Bill which could satisfy any section of Indian opinion. Not one recommendation made in these Memoranda was accepted by the British Government. The Bill in its passage in the Parliament underwent further reactionary changes. It was finally passed on August 2, 1935 and came to be designated as the Government of India Act, 1935.

### **THE GOVERNMENT OF INDIA ACT OF 1935**

#### **Salient Features**

The Act, as finally passed by the British Parliament, consisted of 478 clauses, 16 schedules and occupied 455 printed pages. The salient features of this Act were:—(1) The acceptance of the plan of an all-India federation; (2) the introduction of Dyarchy in the Central Government; (3) the grant of autonomy and responsible Government in the Provinces;



and (4) safeguards, reservations, special responsibilities, overriding powers, discretionary and individual judgment powers in the hands of the Governor-General and Governors; (5) provision for the establishment of a Federal Court.

1. *All-India Federation.* The Act of 1935 accepted the constitutional scheme of an all-India federation. A federation may be defined as a type of state usually formed by independent or autonomous units agreeing to transfer definite powers to a central authority in order to promote certain common ends, political or economic. In other words, a federation is a political contrivance seeking to reconcile national unity with the maintenance of local autonomy. The units entering a federation maintain their individuality and retain their authority over vital matters concerning their interests. A federation postulates a rigid separation of powers between the Centre and the Units, a written and rigid Constitution, and the existence of an impartial tribunal to act as an interpreter and guardian of the Constitution.

*Genesis of the Idea of Federation.* The proposal of an all-India Federation comprising the provinces and the Native States was considered a remote ideal by the Montford Report and the Statutory Commission. The idea assumed practical importance when it was accepted by the Princes at the first Round Table Conference. The Britishers favoured it because in such a Union they could exercise greater influence on the Indian States than in a voluntary Union of States.\* The Indians also welcomed it because under such a polity, 'the pace of responsible and representative government in the Indian States would be accelerated and the unity of the country for which people had been striving for long would be established.'

*The Scheme.* The 1935 Act provided that an All-India Federation would be formed of the 11 Governor's provinces (including the provinces of Sind and Orissa created by the

---

\*The Secretary of State for India pointed out in a speech in the House of Commons that inclusion of States in the federation was calculated to introduce a stabilizing factor in Indian politics. "We should all welcome the entry into the Central Govt. of India of a great force of stability and imperial feeling." Quoted by Dr. B. R. Ambedkar in his "*Federation versus Freedom*".



Act of 1935) and of such States as acceded to the Federation by individual Instruments of Accession. The joining in the Federation by the Indian States was not made compulsory, because they enjoyed certain privileges under their treaties with the British Government. They were about 600 in number and covered 45 per cent of the total area of India, representing about 26 per cent of the total population of the country. The Constitution provided that the Federation would not come into being unless enough States with at least half the total population of all the States in India and as many as were entitled to at least half the total number of seats allotted to them in the upper chamber of the proposed Federal Legislature acceded to the Federation.

2. *Dyarchy at the Centre.* The Act provided for the establishment of dyarchy at the federal centre. The reserved subjects, *viz.*, Defence, External Affairs, Ecclesiastical Affairs and Tribal Areas, were to be administered by the Governor-General with the help of not more than three counsellors to be appointed by him. They were responsible to him and not to the federal legislature. All other matters other than the reserved subjects were to be administered by the Governor-General with the advice of a Council of Ministers responsible to the legislature. The number of Council of Ministers was not to exceed 10.

3. *Provincial Autonomy.* The Act introduced responsible government in the provinces and made them autonomous over a wide field of government. Six provinces, *i.e.*, Assam, Bengal, Bihar, the U. P., Bombay and Madras, had a bicameral system of legislature, while the remaining five provinces had only one House. However, responsible government in the provinces was subject to certain restraints imposed by the Governor who was armed with special powers and had power to overrule the Ministers.

4. *Safeguards.* The most significant feature of the Act was the formidable apparatus of reservations and safeguards. "Responsibility was buried in a pile of reservations, safeguards, and discretion". *The keynote of the Government of India Act was mistrust.* The Act was a device to rivet the chain of slavery round India's neck firmly and that is why



the authors provided safeguards and reservations to frustrate the emergence of a free India.

*Nature of Safeguards.* The Act of 1935 placed in the hands of the British authorities reserved powers to preserve foreign domination in tact. In the Federal sphere, defence, foreign affairs, tribal areas and ecclesiastical affairs were made reserved subjects, free from the control of the Central Ministry. These matters were to be administered only by the Governor-General in his discretion. Similarly, currency and monetary problems were not kept under the control of a responsible minister but under the control of the Governor of the Reserve Bank. The Governor-General had special responsibility to safeguard the financial stability of the Federal Government. Again, the Governor-General and the Governors were vested with special responsibilities for the prevention of grave menace to the peace and tranquillity of India or any part thereof, for protecting the legitimate interests of minorities, of public services and of Indian States and also for preventing discrimination against British commercial interests. In these matters the Governor-General and the Governors could exercise their individual judgment, *i. e.*, they could consult ministers but their advice could be rejected by them.

*British View of Safeguards.* The British authorities took the view that these safeguards were necessary for prevention of mischief, and for maintaining order and tranquillity in the country. They were necessary for efficient administration and for rendering justice between various interests and communities in India. The safeguards were vested with the Governor-General and the Governors because they were impartial and above party conflicts.

*Nationalist View.* Nationalist opinion was opposed to the safeguards and reservations vested in the Governor-General and the Governors. It was urged that these powers were placed in the hands of the latter to counter the working of responsible government. The British authorities kept reserved powers in their hands as they did not trust the Indian Ministers. The Governor-General and Governors were not responsible to the Indian people but to an alien



authority. It was, therefore, feared that they would use these powers not in the interests of the Indian people but for perpetuating foreign domination and supporting vested interests in the country. These provisions, therefore, detracted a good deal from responsible government at the Centre and in the Provinces.

5. *Federal Court.* The Act also made provision for a Federal Court consisting of a Chief Justice and not more than six Judges to be appointed by the British Crown. The function of this Court was to decide disputes between the Centre and the Units, or among the different Units, or in cases involving the interpretation of the Government of India Act of 1935. An appeal against its decision could lie to the Judicial Committee of the Privy Council.

#### **Peculiar Features of the Proposed All-India Federation**

The accepted principles of a federation everywhere are : rigid distribution of powers between the Centre and the Units ; supremacy of the Constitution, and the existence of a Supreme tribunal to serve as an interpreter and guardian of the Constitution. The proposed Indian Federation had these three basic principles, but it had certain other *unique features which distinguished it from all other federations of the world.* These peculiarities may be summarised as follows :

1. *The unusual procedure of formation.* The proposed all-India federation was not a voluntary union of independent sovereign units desirous of coming together for certain common purposes. The British Indian provinces which were under the control of the Government of India had no option but to join the Federation, as they were completely subordinate to the British Crown. As such the Units were not free agents in the act of joining the Federation. It was thrust on them. The process of forming Federation was unusual in the sense that a unitary State was turned into a federal polity without the free consent of the constituent States.

2. *No equality and homogeneity among units.* In federations constituent units are almost equal and homogeneous. In the Indian Federation, however, no attempt was made to secure such uniformity. The Indian federating units differed in



area, population, resources, status and powers. The British Indian provinces were democratically governed, but the Indian States were autocratic.

3. *No uniformity in the application of Federal authority to all the units.* There was no uniformity in the application of federal authority to different units. The British Indian provinces were to accept the authority of the Federation on all subjects included in the federal and concurrent lists. The native States were, however, free to accept as many subjects as they liked and as were specified by them in the Instrument of Accession. The British Government offered concessional terms to the princes to induce them to join the Federation. In the words of Dr. B. R. Ambedkar, "The British Government offered a high price for the co-operation of the princes in the scheme of Federation." Discrimination was made in favour of the princes in the matter of representation, taxation and administration. Great benefits were conferred, important rights were surrendered and immunities were granted by British India to induce the princes to come into the Federation.\*

4. *No legal equality of the Units.* In all federations, the constituent units enjoy legal equality and secure equal representation in the Upper Chambers. In the proposed Indian Federation, however, the Units were not represented equally in the Upper Chamber. The Indian States although representing only 23% of the country's population were entitled to 40% of seats in the Upper House of the Federal Legislature.

5. *Disparity in representation of interests and communities.* The proposed Federation also permitted disparity in the mode of representation of the Units. The representatives of the provinces to the Federal Legislature were to be elected, but those from the States were to be nominated by the Rulers. Further, one-third of the seats in the Federal Assembly were allocated to the princes, one-third to the Muslims, and the remaining third to the Hindus. The reactionary elements *i. e.*, the princes and communal groups in the legislature were likely to prove a hindrance to progressive legislation and to the formation of a stable ministry

---

\*Dr. B. R. Ambedkar, *Federation versus Freedom*, p. 138.



6. *Irresponsible and irremovable nature of Federal executive.* All federations have a responsible executive but the Federal Executive in India was to be irresponsible and irremovable. The Governor-General and the Governors were armed with excessive powers. They could even suspend the Constitution and assume all authority of administration whenever they felt that an emergency had arisen. In no other country are such arbitrary powers given to an executive head.

7. *Indirect election: to Federal Assembly and direct elections to the Upper House.* In all federations, the Lower House represents the people of the Federation as a whole and is, therefore, directly elected; the Upper Chamber represents the units and is, therefore, indirectly elected. In the proposed Indian Federation, however, exactly the reverse of this practice was adopted. The Upper House was to be elected directly by the people, while the Lower House was to be indirectly elected.

8. *Co-equal powers of the two Chambers.* Usually in all federations, the Lower House is given more power than the Upper House. But in the proposed Indian Federation both the Chambers were to enjoy co-equal powers.

9. *Restrictions on the powers of the Legislatures.* Lastly the powers of the Federal Legislature and of the provincial legislatures were hedged in with undue restrictions. In the case of the federation, about 80% of the total budget expenditure was to constitute non-votable expenditure. This included expenditure on defence, debt charges, salaries of high dignitaries and judges, etc., and pensions. Only about 20 per cent of the expenditure was subject to the vote of the Federal Legislature. Even in this sphere the Governor-General had supreme powers of control. He could certify finance bills and restore grants refused by the legislature.

In the sphere of legislation, he could withhold his assent to certain bills or disallow them altogether. He could issue ordinances which could operate for six months or could pass a measure as law by certification if the same had been rejected by the legislature. The Governor-General was vested with the power of deciding at his discretion whether a particular residuary power was to be assigned to the Centre or



to the provinces. The Governors enjoyed similar powers in the Provinces.

*Conclusion.* It would thus be clear that the proposed Indian Federation was a unique experiment in the annals of the constitutional history of the world. The proposed federation was not only a federation, but a quasi-federal structure with elements of unitary constitution. It ran counter to the essential principles of a truly Federal Government. Prof. A. B. Keith says: "For the Indian federal scheme it is difficult to feel any satisfaction. The units of which it is composed are too disparate to be joined together suitably. It is too obvious that on the British side the scheme is favoured in order to provide an element of pure conservatism and to combat any dangerous elements of democracy contributed by British India. On the side of the rulers, it is patent that their essential preoccupation is with the effort to secure immunity from the pressure in regard to the improvement of the internal administration of their States.....It is difficult to deny the justice of the contention in India that Federation was largely evoked by the desire to *evade the issue of extending responsible* government to the Central Government of British India. Moreover, the withholding of defence and external affairs from federal control, inevitable as the course is renders the alleged concession of responsibility all but meaningless...Whether a Federation built on incoherent lines can operate successfully is wholly conjectural; if it does, it will probably be due to the virtual disappearance of responsibility and of assertion of the controlling power of the Governor-General backed by the conservative elements of the States and of British India.\*

#### Federal Executive

*The Scope of the Federal Authority.* According to section 8 of the Government of India Act of 1935, the Executive authority of the Federation extended generally to all matters in British Indian provinces and federated States with respect to which the Federal Legislature had power to make laws for those provinces or States. It further extended to the raising in British India on behalf of His Majesty of Naval,

---

\*A. B. Keith, *A Constitutional History of India*, p. 474.



Military and Air forces and the governance of His Majesty's forces belonging to the Indian establishment and to the exercise of authority vested in His Majesty in relation to the Tribal Areas.

*Nature of the Executive.* As pointed out before, the Act of 1935 established a sort of Dyarchy at the Centre, with the Governor-General as the head of the executive. The subjects enumerated in the Federal list were divided under two heads: (1) Reserved and (2) Transferred. The former included such subjects as Defence, External Affairs, Ecclesiastical Affairs and Tribal Areas. These were to be administered by the Governor-General in his discretion, *i. e.*, without consulting the Ministers. The latter included subjects like law and order, finance, import and export, commerce, health, education, etc. Such subjects were to be administered by the Governor-General acting on the advice of his Council of Ministers.

*Reserved Departments.* In the administration of the four Reserved Departments enumerated above, the Governor-General was assisted by Counsellors not exceeding three in number and to be appointed by him. They were to be ex-officio members of both the Chambers of the Federal Legislature, without the right of vote. The function of the Counsellors was purely advisory. Their advice was not binding on the Governor-General who was responsible only to the Secretary of State and through him to the British Parliament.

*Council of Ministers.* In the administration of the Transferred Department, the Governor-General was to seek the aid and advice of a Council of Ministers not exceeding 10 in number. The ministers were required to be members of either House of the Federal Legislature and were to hold office during the pleasure of the Governor-General. The Governor-General was to appoint Ministers according to the provisions laid down in the Instrument of Instructions. He was to use his best endeavours to select his Ministers in consultation with the person who in his judgment was most likely to command a stable majority in the legislature.



He was to appoint such persons as Ministers (including so far as practicable representatives of the Federated states and members of important communities) as were best in a position collectively to command the confidence of the legislature. The Instrument of Instructions also impressed on the Governor-General the need for fostering among his Ministers a sense of joint responsibility.

*Functions and Powers of the Council of Ministers.* The Council of Ministers was to offer advice to the Governor-General in all matters except those where he was required to act in his discretion. In other words, the authority of the Council of Ministers extended to all Transferred subjects. The Governor-General was to allocate work and distribute portfolios among his Ministers. Normally, he was to be bound by the advice of his Ministers, but in the discharge of his special responsibilities, he was to act in his individual judgment.

*Special Responsibilities of the Governor-General.* The special responsibilities of the Governor-General related to the following matters: (1) Prevention of any grave menace to the peace and tranquillity of India or any part thereof; (2) Safeguarding the financial stability and credit of India; (3) Safeguarding of the legitimate interests of the minorities; (4) Safeguarding of the legitimate rights of the public servants and their dependants; (5) the prevention of commercial discrimination and discriminatory taxation against the entry of British and Burmese goods; (6) the protection of the rights and dignity of the rulers of the States; and (7) Securing the due discharge of his discretionary powers.

*Conclusion.* There are practical dangers in the working of any dyarchical form of executive. It is difficult to see how the two halves of the Central Government—one reserved and the other transferred could co-operate with each other. The experiment of dyarchy proved a complete failure in the provinces. It could not do better at the Centre. Divided responsibility meant blurred responsibility. The authors of Simon Commission were quite frank when they said, "It would indeed be an astonishing result if, at a time when Dyarchy is abandoned in the provinces, the introduction of a similar principle were to be recommended at the Centre....



We regard such a plan as not only unworkable but as no real advance in the direction of developing central responsibility at all.”\*

### **Powers and Functions of the Governor-General**

The Governor-General occupied a unique position in the Constitution. He was not only the head of the Federal Executive but had many other responsibilities and powers. He was appointed by His Majesty on the advice of the British Prime Minister for five years. He enjoyed an annual salary of Rs. 250,800 and other allowances fixed by His Majesty. All this amount was charged on the revenues of the Federation and was not subject to the vote of the Legislature.

*Extent of Powers.* The powers of the Governor-General could be broadly classified under three heads : (1) Powers in relation to Reserved subject, *i.e.*, Defence, External Affairs, Tribal Areas and Ecclesiastical Affairs. In these matters, he was to exercise his sole discretion, *i. e.*, he was not to seek the advice of his Ministers ; (2) Powers in relation to Transferred subjects. In these matters, he was to act on the advice of his Ministers and to play the role of a constitutional head. (3) Powers in relation to his fields of special responsibility. In the discharge of these duties, he was to exercise his ‘individual judgment’, *i.e.*, he could take the advice of his Ministers but he was not bound to accept the same.

*Other Discretionary Powers.* The Governor-General also enjoyed a large number of other discretionary powers. He could, for example, in his discretion appoint or dismiss Ministers, preside over their meetings, appoint the chairman and members of the Federal Public Service Commission and Chief Commissioner for Delhi, Ajmer-Merwara, Coorg and Baluchistan. He had discretionary powers in the legislature and financial spheres as well. He could in his discretion summon, prorogue or dissolve the Federal Legislature. He had the discretionary power to stop the proceedings of any Bill or amendment to the Bill if he felt that such a step was necessary in the interests of peace and tranquillity of India. He could veto a Bill or certify it. He could issue ordinances lasting six months. He had extensive powers over finance

---

\*Simon Commission Report, Vol. II, p. 137.



and could in his discretion decide what items of expenditure would be incurred in the Reserved Departments. He exercised complete control on non-votable items which constituted 80 per cent of the budget and could restore any demand for grant rejected by the House.

*Other Powers of Individual Judgment.* The Governor-General exercised his individual judgment in regard to the appointment of the Advocate-General of the Federation, the High Commissioners, and the Directors of the Reserve Bank of India.

*The Position and Powers of the Governor-General detracted a good deal from the responsibility at the Centre as well as from Provincial Autonomy.* At the Centre the most important functions of the Government were carried on by the Governor-General, in his discretion. This seriously limited ministerial responsibility. The Ministers could not feel any sense of responsibility in tendering advice on matters where they knew it was not going to be accepted.

The Governor-General had substantial powers with regard to the provinces as well. This affected adversely the sphere of the Provincial Autonomy. The Governor-General could intervene in provincial affairs for the due discharge of his special responsibilities. On one occasion the Governor-General issued a directive under section 126 to the Governors of U. P. and Bihar, directing them to override their Ministers' decisions regarding the release of certain political prisoners. Whenever the Governor of a Province acted in his discretion, he was to act under the discretion of the Governor-General.

*Failure of Constitutional Machinery.* The Governor-General was given extraordinary powers in the event of the breakdown of the constitutional machinery in the Centre or any part of India. If he was satisfied that a situation had arisen in which the Government of the Federation or any part thereof could not be carried on in accordance with the provisions of the Constitution, he could issue Proclamation and could assume to himself any or all the powers vested in any federal organ, excepting the powers and functions entrusted to the Federal Court. Such proclamations could be



extended to a maximum period of three years. The Governor-General acting in his discretion was the sole judge of emergency necessitating the suspension of the Constitution.

*Conclusion.* The vast powers vested in the hands of the Governor-General made him virtually a dictator in India. In the words of Mr. Winston Churchill, he was "armed with all the powers of a Hitler or Mussolini. By a stroke of the pen he could scatter the Constitution, and decree any law to be passed, or declare martial law". He had supreme control over legislation, finance and administration. He could make or unmake laws and assume all authority in his own hands.

### The Instrument of Instructions

The Instrument of Instructions was the vital document embodying the instructions which the Governor-General and the Governors were to follow in the discharge of their duties and in the exercise of their individual judgment and discretionary powers. The instructions related both to the functioning of the Government at the Centre and in the Provinces. They pointed out how the Governor-General and the Governors were to act in the matter of the selection of the leader of the House or the ministers, including representatives of important minority communities and the States, how they were to foster a sense of joint responsibility among the Ministers, Counsellors and the financial Adviser and how they were to exercise their special responsibilities, etc.

The Instrument of Instructions emphasised the need for encouraging a sense of joint responsibility among the Ministers. It pointed out the way for the smooth functioning of the Government both at the Centre and in the Provinces. It ended with the words: "And finally it is our will and pleasure that our Governor-General should so exercise the trust which we have reposed in him that partnership between India and the United Kingdom within our Empire may be furthered to the end that India may attain its due place among our Dominions."\*

*Instrument not mandatory.* It should, however, be understood here that the instructions contained in the Instrument

---

\*Para 31.



were not mandatory. No judicial notice could be taken of them, and if the Governor-General or the Governors chose to disregard them, their actions could not be censured in the law courts. The actual working of the Constitution proved that the Governor-General did not respect the Instrument and frequently interfered with the work of the provincial ministries directly or through the Governor. This made the functioning of responsible government difficult.

#### DISTRIBUTION OF POWERS BETWEEN THE FEDERATION AND THE UNITS.

*Two Methods of allocating Powers.* There are two methods of allocating powers between the Centre and the Units in different Federations. One method is to enumerate certain specified powers and hand them over to the Central Government, leaving the *residuary* powers in the hands of the constituent units of the Federation. America and Australia have adopted this procedure. The other method is to allot specified powers to constituent units and to vest residual powers in the Federal Government. This method has been followed by Canada where the idea was to strengthen the powers of the Central Government.

*The Indian Experiment.* In the 1935 Act, India followed neither of the two methods referred to above. The constitution drew up *three Legislative Lists, viz.*, a Federal Legislative List, a Provincial Legislative List and a Concurrent List. Although care was taken to distribute every conceivable powers among the three lists, yet it is possible that some subjects might have escaped allocation. Such residuary power were vested under the Constitution in the hands of the Governor-General. They were assigned neither to the Federation nor to the Provinces. The Governor-General was given the sole authority to allocate such powers, when necessity arose, either to the Centre or the Provinces, in the exercise of his sole discretion. This unique position is not to be found any other Constitution of the world.

*The Federal List.* The Federal Legislative list included 59 subjects of all-India importance. The Federal Legislature could make laws in respect of these subjects. These subjects were : Defence, including naval, military and air forces, External Affairs ; Currency, Banking and Insurance ;



Foreign Trade ; Maritime Shipping and Railways ; Posts, Telegraphs and Telephones, Wireless, Broadcasting, etc.

*The Provincial List.* The provincial list contained 54 matters of regional importance. Such subjects were : Law and Order; Courts, Prisons and Agriculture; Land Revenue; Industries, Forests, and Fisheries; Education and Local Self-Government, Internal Trade, Roads and Public Works. These subjects were under the legislative and administrative control of the provincial governments.

*The Concurrent List.* The concurrent list contained 36 subjects including civil and criminal law and procedure, marriage and divorce, wills, succession, transfer of property, trusts, contracts, labour welfare, factories, inland shipping and navigation, etc. On these subjects both the Central and the Provincial legislatures were competent to pass laws. In case of conflict between the laws passed by the federal and provincial legislature on the same subject, the federal law prevailed and the provincial law became null and void to the extent that it was contrary to the federal law. But if such a conflicting provincial law received the assent of the Governor-General or of His Majesty, it prevailed over the federal law.

*Residuary Powers.* The residuary powers of legislation, as pointed out before, vested in the hands of the Governor-General.

### **Instrument of Accession**

The Instrument of Accession was the name of the document which was to be executed by the rulers of Indian States for joining the Federation. It enumerated the subjects in respect of which the ruler accepted the authority of the Federal Government. It was required to be signed personally by the ruler and accepted by the British Crown. After acceptance, it was laid before each House of the British Parliament for formal approval. It then became a legal document and judicial notice was taken of it by all courts.

### **Central Control over the Provinces**

In the 1935 Act there was no rigid separation of administrative powers between the Federation and the Units.



The Governor-General could exercise administrative control over the Governors whenever the latter exercised their discretionary powers or acted in their individual judgment. The Governor-General could also give directions to the Governor of a Province as to the manner in which the executive authority of the province was to be exercised for the prevention of grave menace to the peace or tranquillity of India or any part thereof. Moreover, the Governor-General could assume to himself the authority of administration of a province in the event of an emergency or in the event of the breakdown of the constitutional machinery of a province. The Federal Legislature was also empowered to make laws on subjects within the provincial list at the request of two or more provinces.

#### THE FEDERAL LEGISLATURE

The legislature of the Federation according to the 1935 Act was to consist of the Governor-General and two Chambers to be known as the Council of State and the House of Assembly.

#### Composition of the Federal Legislature

*The Federal Assembly.* The lower House or Federal Assembly was to consist of not more than 375 members out of which not more than 250 members were to be representatives of British India and not more than 125 of the States. Thus, the Indian States were allotted one-third of seats in the Federal Legislature although they constituted only one-fourth of the total population of India. The members from British India were to be indirectly elected. They were to be chosen by the members of Provincial Legislatures, each community and group in them forming a separate electoral college for choosing its quota of members. The 250 seats allotted to British India were to be distributed among the Provinces community-wise. Of these, 105 were General seats including 19 Scheduled Castes' seats, 82 Muslim seats, six Sikhs seats, four seats for Anglo-Indians, eight for Europeans, eight for Indian Christians, 11 for representatives of commerce and industry, 10 for labour, seven for landholders and nine for women.



The seats were distributed among the Provinces as follows: Madras 37; Bombay 30; Bengal 37; U. P. 37; Punjab 30; Bihar 30; C. P. & Berar 15; Assam 10; N. W. F. P. 5; Orissa 5; Sind 5; British Baluchistan 1; Delhi 2; Ajmer-Merwara 1 and Coorg 1 and Non-Provincial seats 4; (3 for Commerce and Industry and 1 for Labour). The distribution of 125 seats among the different States was also laid down in the Act. The bigger States were allotted a larger number of seats, *e. g.*, Hyderabad 16; Travancore 5, Gwalior 4; Kashmir 4; and Baroda 3. The smaller States were given representation in groups.

The term of the Assembly was five years, but it could be dissolved earlier by the Governor-General.

*The Council of States.* The Council of States was the Upper House of the Federal Legislature. It was to consist of not more than 260 members of whom 156 were to be representatives of British India and not more than 104 of the federated States. Out of 156 seats assigned to British India, six were to be filled in by persons nominated by the Governor-General in his discretion. The other 10 seats were assigned on a non-provincial basis as follows: Europeans 7; Anglo-Indians 1; and Indian Christians 2. The remaining 140 seats were distributed among the different provinces as follows: Madras 20; Bombay 16; Bengal 20; U. P. 20; Punjab 16; Bihar 16; C. P. & Berar 8; Assam 5; N. W. F. P. 5; Orissa 5; Sind 5; British Baluchistan 1; Delhi 1; Ajmer-Merwara 1; and Coorg 1. The 104 seats were to be distributed among the States as prescribed by the Act, the bigger States getting more seats—Hyderabad 5; Mysore 3; Kashmir 3; Gwalior 3; Baroda 3; and Travancore 2.

The Council of States was to be a permanent body not subject to dissolution. One-third of its members, however, were to retire every third year by rotation, thus bringing about a complete change in nine years.

It will be noticed that the distribution of seats among the various communities in British India was not effected on any logical basis. Muslims and the princes were given disproportionate weightage. The former whose number was only about 66½ millions were assigned 82 seats in the Federal



Assembly, while Hindus who were about 144 millions were allotted only 105 seats. The princes were similarly given excessive representation both in the Federal Assembly and the Council of States. This was done to protect the interests of that reactionary class in India which was conceived as the best guarantee for the maintenance of British domination over India and for the protection of the rights of British vested interests. The principle of communal electorate prevented the formation of organized political parties as distinguished from communal factions and thus made the functioning of parliamentary government difficult. The indirect relations to the Federal Assembly were another objectionable feature of the Act.

### **Functions and Powers of the Federal Legislature**

The powers of the two houses of the Federal Legislature were kept identical except for the fact that money bills could originate only in the Lower House. *The Federal Legislature* was a non-sovereign law-making body. Its powers were severely restricted. It could neither amend the Indian Constitution nor repeal an Act of Parliament applicable to India. Bills passed by the Federal Legislature could not become Acts unless approved by the Governor-General. The latter could issue ordinances and Acts without the concurrence of the Legislature. The Federal Legislature, with these limitations, could frame laws for the whole of the country. It also had extra-territorial jurisdiction in respect of Indian nationals and the property belonging to them. It could pass laws on subjects enumerated in the federal and concurrent list. It was also empowered to legislate on provincial subjects if the Governor-General made a proclamation of emergency. Its financial powers were also restricted. About 80 per cent of the budget was non-votable. Even in the case of votable items the Governor-General had the right of interference. He could restore a grant reduced or rejected by the Assembly. Even the procedure of the legislation could be controlled by the Governor-General through his rule-making powers, and by the power to stop the proceedings at any stage if he felt it was necessary to do so in the interests of the peace and tranquillity of the country. The Federal Legislature had no control over the Federal Executive, especially the Reserved



half, consisting of the departments of Defence, External Affairs, Ecclesiastical Affairs, and Tribal Areas. The Legislature could control only the Council of Ministers but not the Governor-General and his Counsellors. The Federal Legislature was mainly a deliberative body ; it could exercise influence but not any effective control on the irremovable executive. Prof. A. B. Keith has summarised the position thus : "In the Federal Government the semblance of responsible Government is present. But the reality is lacking, for the powers of defence and external affairs vested in the Governor-General limit vitally the scope of ministerial activity. Further, the measure of representation given to the rulers of Indian States negatives any possibility of even the beginnings of democratic control. It will be a matter of the utmost interest to watch the development of a form of government so unique ; certainly, if it operates successfully, the highest credit will be due to the political capacity of Indian leaders, who have infinitely more serious difficulties to face than had the colonial statesmen who evolved the system of self-government which has now culminated in Dominion Status."\*

#### THE FEDERAL COURT

A Federal Constitution necessitates the establishment of a supreme judicial tribunal of the highest independence which may adjudicate on all legal disputes arising between the Federation and the units, and serve as an 'interpreter and guardian of the Constitution'. In accordance with the provisions of the Government of India Act, 1935, a Federal Court was established in India on October 1, 1937. It consisted of a Chief Justice and two other judges, although under the Act the maximum strength of puisne judges was fixed at six. The judges were to be appointed by His Majesty and could continue in office till they attained the age of 65 years. They had the option of relinquishing office earlier, if they so chose. They held office during good behaviour and could be removed from office by His Majesty on the ground of misbehaviour or infirmity of body or mind. The salaries, allowances, etc., were fixed by His Majesty and they could not be altered to their disadvantage during the term of their

---

\*A. B. Keith, *A Constitutional History of India*, Preface.



office. The Chief Justice drew a salary of Rs. 7,000 per month and other judges Rs. 5,500 each. Their salaries and their cost of establishment were not subject to the vote of the Legislature and their judicial conduct could not be discussed in the Legislature.

*Qualifications of the Judges.* In order to qualify for appointment as a judge of the Federal Court a person must have held the office of a judge of a High Court in British India or in a Federated State for at least five years or must have practised as a barrister of England or Northern Ireland, or an advocate of Scotland or as a High Court pleader for at least 10 years. In the case of the Chief Justice, he should have practised at the bar for 15 years or must have held the office of a judge of a High Court for at least five years, provided further that he must have been a barrister, advocate or pleader prior to his first appointment as a judge. This provision was made to exclude members of the Civil Service who did not have legal qualifications from being appointed as Chief Justices.

#### **Functions of the Federal Court**

The Federal Court had both original and appellate jurisdiction. It could also function in an advisory capacity and render advice to the Governor-General on any matter involving the interpretation of the Constitution. The original jurisdiction of the Federal Court extended to (a) cases arising in a dispute between the Federation and the Units or among units, insofar as the dispute involved any question of law or fact on which the existence of legal right depended. It had appellate jurisdiction also and was competent to hear appeals from High Courts of Provinces and Federated States, if the latter certified that the case involved any question relating to the interpretation of the Constitution or any order-in-Council or an Instrument of Accession. In 1948, the jurisdiction of the Federal Court was extended to hear appeals from High Courts in civil cases involving an amount of not less than Rs. 50,000.

#### **Federal Court not a Supreme Court**

The Federal Court in spite of its extensive original appellate and advisory powers was not the Supreme Court



in India. Appeals from its decisions could lie to the Judicial Committee of the Privy Council in two types of cases ; (a) those involving the interpretation of the Constitution or an Order-in-Council or the Instrument of Accession of any State; and (b) in any other matter, by leave of the Federal Court or of His Majesty-in-Council. It had no jurisdiction over appeals from High Courts in criminal cases, unless they involved questions relating to the interpretation of the Constitution.

### **The Judicial Committee of the Privy Council**

The Judicial Committee of the Privy Council was the highest judicial tribunal for British India and could hear appeals from the decisions of High Courts in India, both in civil and criminal cases. Appeals to the Privy Council in civil cases could lie if the subject-matter of the suit was not less than Rs. 10,000 and in criminal cases if it involved a question of law, as distinguished from merely one of fact.

### **The Working of the Federal Court**

The Federal Court was established in 1937 with three judges, (Sir. Maurice Gwyer as Chief Justice, and Sir Shah Muhammad Sulaiman and Mr. S. Varadhachari as judges). It functioned impartially and independently. It adjudicated disputes between the Central Government and the Provinces and kept them within their legal boundaries. It heard a dispute between the Government of the Central Provinces and Berar and the Government of India regarding the former's powers to levy a tax on the sale of petrol and lubricants. It decided in favour of the Provincial Government, holding that the new tax was within the sphere of its jurisdiction. On April 22, 1943, Sir Maurice Gwyer, Chief Justice of India, presiding over the Federal Court ruled that Section 26 of the Defence of India Rules authorising the Central and Provincial Governments to detain suspected persons was *ultra vires*. However, the Central Government did not show readiness to respect this decision and the Governor-General promulgated an ordinance substituting the section dealing with detention in the Defence of India Rules with a new section having retrospective effect. This undermined the independence of the Federal Court.



## FEDERAL RAILWAY AUTHORITY

The Act of 1935 also made provision for the establishment of a Federal Railway Authority to administer the railways. The Authority was to be a statutory body and was to be constituted to perform the functions of regulation, construction, maintenance and operation of Indian Railways without political interference.

*Composition.* The authority was to consist of seven persons, at least three of whom were to be appointed by the Governor-General in his discretion and the rest on the advice of the Ministers. Only those who had experience of industry, agriculture, finance or administration were eligible for membership. Those who held office under the Crown for 12 months preceding could not be appointed as members.

This body never came into existence.

## RESERVE BANK OF INDIA

The 1935 Act provided for the establishment of a Reserve Bank of India as well to control the currency and credit of the country. It was established in 1935.

*Composition.* The Bank's affairs were managed and controlled by a Central Board of Directors composed of a Governor and two Deputy Governors, appointed by the Governor-General-in Council, four Directors nominated by him in a similar manner, 8 Directors elected by the shareholders, and a Government official nominated by the Government of India.

No bill affecting the Constitution and functions of the Reserve Bank could be introduced in the Legislature without the previous consent of the Governor-General. The Reserve Bank has now been nationalised and its composition slightly changed.

## Select Bibliography

- A. B. Keith* : A Constitutional History of India, pp. 204-474.
- K. T. Shah* : Federal Structure
- Sir Shafaat Khan* : Indian Federation
- R. P. Dutt* : India Today, pp. 300-342
- Coupland* : Indian Problems Part I, Chapters VII-X, pp. 80-148.
- J. P. C. Report* Vol. I
- Simon Commission Report*, Vol. I, II.
- Panniah, K. V.* : India as a Federation.



## CHAPTER 6

### PROVINCIAL AUTONOMY IN ACTION

#### The Nature of Provincial Autonomy

The expression 'Provincial Autonomy' is understood in two distinct senses; namely, (i) freedom of provincial government from Central control in clearly demarcated spheres of authority, and (ii) responsible government inside the province.

1. *Freedom from Central Control.* This implies that the provincial government should be autonomised in legislative, administrative and financial spheres and that it should derive its powers not merely by delegation from the Central Government, but by constitutional provisions. Legislative autonomy means that the laws and regulations relating to the province should be framed by the provincial legislature and not by the Centre. Administrative autonomy implies that the public servants who administer the provinces should be entirely under the control of the provincial government and not subject to the authority of the Central Government. By financial autonomy is meant that there should be a clear demarcation of the Central and provincial finances and that the provinces' power of raising and disbursing funds should not be fettered by the Central authorities.

2. *Responsible Government.* Again Provincial Autonomy means responsibility of the provincial government to the representatives of the people. There is an integral connection between Provincial Autonomy and responsible government, for the government of a province with an autocrat at its head would be nothing better than provincial despotism. The Provincial Government in the administration of its affairs should owe responsibility and allegiance to the provincial legislature.

#### The Evolution of the Idea

Provincial autonomy is the product of a long period of constitutional development extending from 1860 to 1935.



Its foundations were laid as far back as the Great Rebellion of 1857, when the defects and dangers of administrative centralisation came into the limelight. The history of the relaxation of central control over provincial government is 'closely related to the popular demand for constitutional or responsible government in the country'.\* The first step taken in this direction was the establishment of provincial legislative councils in 1861. The financial reforms of Lord Mayo undertaken in 1876 and the recommendations of the Decentralisation Commission helped the process. The status of the provinces and their powers were improved by the Councils Act of 1892. The Act conceded to some extent the demand of Indians for participation in the administration of the country by enlarging the size of the Councils and by indirectly introducing the system of election.† The Act of 1909 enlarged the sphere of provincial administration, although retaining general central control. In the major provinces there was a slight relaxation of administrative and financial control. The Act of 1919 took the most decisive step by working out the Devolution Rules, providing for devolution of authority and granting to the provinces a sphere of legislative and administrative independence. The Preamble to the Act of 1919 stated . . . "It is expedient to give the Provinces in provincial matters the largest measures of independence of the Government of India which is compatible with the due discharge by the latter of its responsibilities."‡

#### **Provincial Autonomy under the Act of 1935**

The Act of 1935 introduced responsible government in the provinces. It abolished Dyarchy and entrusted the entire field of provincial administration to a Council of Ministers responsible to the Provincial Legislature. The Provincial Governments were granted exclusive jurisdiction in internal matters by an Act of Parliament and not as agents of the

---

\*Bisheshwar Prasad, *Origins of Provincial Autonomy*, p. 376

†The number of additional members of the Legislative Councils of Madras and Bombay was increased to between 8 and 20 and of U. P. and Bengal to between 15 and 20. The nominees of the local bodies and of special interests were appointed members of the Council.

‡Preamble to the Govt. of India Act, 1919.



Central Government. Provincial Autonomy according to the Joint Parliamentary Report was "a scheme whereby each of the Governor's Provinces will possess an executive and a legislature having exclusive authority within the Province in a precisely defined sphere, and in that exclusively provincial sphere broadly free from control by the Central Government and Legislature."\* The Provinces had also an independent judiciary and an efficient public service. The head of the Provincial Government was the Governor who was normally expected to act on the constitutional advice of his Ministers.

It must, however, be borne in mind that the Act of 1935 did not contemplate complete autonomy and responsibility to the Provinces. There were several limitations on the powers of the provincial Executive and Legislature, which seriously restricted the sphere of ministerial responsibility.

*Powers of the Governor.* The Governor of a Province was to exercise his authority in a three-fold manner: (1) In some matters he was to act on the advice of his Ministers. All executive functions except those concerning the exercise of the Governor's special responsibilities and those relating to the exercise of his individual judgment were included in this category. (2) In the second category were included those matters in which the Governor was to exercise his direction, *i. e.*, not to consult his Ministers. These included matters like (i) presiding over the meetings of his Council of Ministers, (ii) taking steps to combat crimes of violence committed to overthrow the Government; (iii) making rules for securing that no member of the police force may divulge to persons other than those authorised in this behalf the sources from which they derive information regarding the activities of terrorists, etc.; (iv) making rules requiring Ministers and Secretaries to the Government to transmit to him certain information; (v) stopping discussion or any bill or clause of a bill pending before the Legislature; (vi) promulgation of ordinances; (vii) enactment of Governor's Acts; (viii) refusing assent to bills passed by the legislature. The third category of his powers

\* Section 290.



consisted of matters in which he was to act in his individual judgment, *i.e.*, he was constitutionally bound to consult his Ministers, but had the power to override their advice. These related to the discharge of his special responsibilities and powers, namely, (i) ensuring the safety and tranquillity of the Province; (ii) prevention of discriminatory treatment against any section of the populace; (iii) securing the fulfilment of the liabilities with regard to the non-votable items of the provincial expenditure; (iv) securing the execution of the orders of the Governor-General or of the Secretary of State, and (v) carrying out of the duties imposed on him personally.\* In addition, the Governor possessed the power to issue a Proclamation, suspending the Constitution and assume to himself all the powers of the provincial administration in times of emergency. Wherever the Governor exercised such special powers, he acted under the general control of the Secretary of State or the Governor-General. Thus, the Governor was simultaneously the constitutional head of the Province and the subordinate agent of the Secretary of State and the Government of India.

There were other limitations on the legislative powers of the Provincial Government. The Government of the Provinces were to exercise their executive powers in such a way as not to impede the authority of the Federal Government. The Central Legislative was authorised to pass laws on subjects included in the provincial legislative list, if a Proclamation of Emergency was issued by the Governor-General. The allocation of financial resources between the Federation and the Provinces also involved the dependence of Provinces on bounties from the Centre and curtailed their autonomy.

The foregoing restrictions constituted a serious limitation on Provincial Autonomy. The Governor was vested with formidable reserve powers which constituted a hindrance to the development of Responsible Government in the provinces. Sir Chimanolal Setalwad, a liberal leader, correctly remarks that "*provincial responsibility was buried in a pile of reservations, safeguards and discretions.*"†

\*Report of the Indian Statutory Commission, Vol. II para 49, p.36.

†Chintamani and Masani, "*India's Constitution At Work*", p. 93,



### Working of Provincial Autonomy

The Act of 1935 was vehemently criticised by various sections of people. Only British statesmen spoke favourably on it. Sir Maurice Gwyer, the chief draftsman of the Act, said, "The clear intention behind the Act was to set India upon the path of responsible government and to promote the complete realisation of her ambitions in this respect." He added that section 9 and 50 of the Act and the Instrument of Instructions clearly visualised the establishment of responsible government.\* Lord Lothian was also of the view that in spite of safeguards, conventions would soon create Dominion Self-Government in India. The Indian liberals criticised the limitations which the Act imposed on self-government but were prepared to work it for what it was worth. The Indian National Congress was opposed to the Act lock, stock and barrel and considered it "a prodigy of imperialist statesmanship" devised to "secure the continuance of British rule". Pandit Nehru described the Act as "a new charter of bondage". The Muslim League while denouncing the 'safeguards' as making responsible government 'nugatory', recommended that "the provincial scheme of the Constitution be utilised for what it is worth".†

The successful working of responsible government in a country depends upon certain assumptions which were not in existence in this country. The prerequisites of parliamentary government are a political consensus, a spirit of reasonableness and accommodation among the political parties and enlightened liberalism of the people. The political opinion in India was hostile to the Act and it distrusted British intention.‡ The Congress had fought the elections in terms of conflict and entered the legislatures not to work

---

\* *Approaches to the Indian Constitutional Problem. India Quarterly* (1948), p. 5-19.

† *Indian Annual Register* 1936 Vol. I. pp. 299-300.

‡ Lord Lothian wrote an article, 'India under the new Constitution' in *Twentieth Century*, Sept. 1945. "The core of the Act is that the Centre of political gravity will pass from British to Indian hands—if the Indian Princes and British Indian electorate return legislatures which are capable of assuming responsibility for the government of India."



but to wreck it. There was no agreement among the various political parties on the fundamental issues. Most of them were ill-organised and their main aim was to safeguard their special interests and not to build for a just democratic order. The majority party wanted to have its own way and the minority parties transcended the bounds of legitimate opposition.

The plan of All-India Federation envisaged in the Act never came into operation due to the marked hostility towards it by all important sections of political opinion, including the princes. The provincial part of the Act, however, came into force on April 1, 1937, at the conclusion of the elections to the new provincial legislatures. The Congress won absolute majority in six provinces (Madras, Bihar, Bombay, U. P., C. P. and Orissa) and was the largest group in others. The Muslim League was able to capture only 51 out of 480 Muslim seats in all provinces.

#### Office Acceptance

The Indian National Congress did not approach the new Constitution with any spirit of co-operation. Left Wing Congressmen were opposed to office acceptance. To quote Pandit Jawaharlal Nehru, "It has been forced upon us against our will. We dislike it thoroughly, and we propose to make its functioning as difficult as possible". The rightists, however, were in favour of accepting office and in the A. I. C. C. meeting held at Delhi in March 1937,\* it was finally decided that Congress should be permitted to accept "offices in Provinces where the Congress commands a majority in the legislature, provided that the offices shall not be accepted unless the leader of the Congress Party in the legislature is satisfied and is able to state publicly that the Governor will not use his special powers of interference or set aside the advice of Ministers in regard to their constitutional activities. The Governors with the full assent of the Governor-General and the Secretary of State for India declined to give the required undertaking to the Congress party."† The Congress

\**The Times of India*, March 17 and 18, 1937, quoted in Coupland's *Constitutional Problem in Indian*.

†Statement by Mr. R. A. Butler, Under-Secretary of State for India in the House of Commons, made on 8th April, 1937.



having refused to form ministries, in the absence of assurances from Governors, the latter installed Interim ministries in the six Congress provinces. These consisted of leaders of minority group in the legislature. The ministries continued in office till July 1937, when the Governor-General appealed to the people of India to take advantage of the Act. He said, "I am convinced that the shortest road to that fuller political life which many of you so greatly desire is to accept this Constitution and to work it for all that it is worth . . . you may count on me, in face of even bitter disappointment, to strive untiringly towards the full and final establishment in India of the principles of parliamentary government."\* The Congress responded favourably to the conciliatory tone of the Viceroy's statement and permitted office acceptance, stating at the same time that "office is to be accepted and utilised for the purpose of working in accordance with the lines laid down in the Congress Election Manifesto and to further in every possible way the Congress policy of combating the new Act, on the one hand, and of prosecuting the constructive programme, on the other." Ministries were forthwith formed in all the six provinces where the Congress had a majority. A little later, the Congress was also able to form Ministries in Assam and the N. W. F. P. The Congress was virtually in power in nine provinces out of eleven. It was only in Bengal and the Punjab that coalition Cabinets were formed with the Muslim League party as the dominant group. In both the Congress and non-Congress provinces the Ministries worked hard to ameliorate the lot of the toiling masses and tried to improve the economic conditions of the people.

### Record of Congress Ministries

So long as the Congress party remained in power the Governors wisely refrained from exercising their special powers of interference. The fact was admitted in the fifty-first session of the Congress which stated, "a measure of co-operation was extended by the Governors to the Ministers". Even Mahatma Gandhi admitted in 1939 that "Governors had played the game." It should not, however, be taken to

---

\**Times*, June 22, 1937 quoted by Coupland in *Constitutional Problems*, p. 20.



mean that the Governors became mere constitutional heads. It only means that as far as possible both the Governors and the Ministers acted with great caution to avoid clashes and constitutional crises. Clashes did occur but they were few and far between. In 1938 there occurred a clash between the Governors and Congress Ministries in the United Provinces and Bihar over the question of the release of political prisoners. The Congress Ministries in these provinces decided to release political prisoners. The Governor-General, however, issued a directive to the Governors under Section 126 of the Act overriding their decision as it affected the Governors' special responsibility for the maintenance of peace and tranquillity. The Governors in pursuance of these instructions from the Governor-General expressed their inability to agree to the issue of orders passed by the respective Ministries directing the release of political prisoners. As a result, the Bihar and United Provinces Ministries resigned on February 15, 1938. This was a clear case of breach of provincial autonomy, of the Centre's interference in provincial sphere. The Congress held that the interference of the Governor-General was a clear violation of the assurance extended by him and a misapplication of Section 126 (5) of the Act.\* However, the deadlock was averted by negotiations, the Governors and the Ministers accepting the policy of release after individual examination of each case. In Orissa a clash occurred in 1938 over the appointment of Mr. J. R. Dain, Revenue Commissioner of Orissa, as acting Governor during the absence of Sir John Hubback, Governor, on leave. The Congress Working Committee at its meeting in April 1938 held that the appointment of an officer of the Orissa service subordinate to the ministers as Acting Governor in the absence of the permanent Governor was "undesirable and a contravention of the usual convention", as it was difficult for Ministers to act as Minister under those who had been their subordinates. Mahatma Gandhi also supported this view, saying that "it was incongruous and unbecoming and reduced autonomy to a farce." The Orissa Ministry declared its intention to resign, if this appointment

---

\* Resolution of 51st Session of the Indian National Congress, February 1938.



was not cancelled. The threatened crisis was averted by cancelling Sir John Hubback's leave. Again, there was the possibility of a clash between the Orissa Ministry and the Governor in 1938. The Orissa Legislative Assembly passed the Madras Estates Land (Orissa Amendment Bill) on February 5, 1938, providing for alteration of the rate of rent in the permanently settled areas without compensation. The Governor reserved the bill for consideration of the Governor-General under section 76. The Chief Ministers of Orissa regarded this reference of the bill to the Governor-General as a clear encroachment on ministerial responsibility. However, the issue did not precipitate a constitutional crisis. The Governors during the Congress regime vetoed only four measures passed by the provincial legislatures.

The Congress had to quit office in 1939 as a protest against the British Government's dragging India into war without her consent and without clarifying her war aims. The Governors, on the resignation of the Congress Ministries in eight provinces, were compelled to declare a state of emergency and to take all authority in their own hands, under section 93 of the Act. They carried on the administration of these provinces with the help of a few senior members of the Indian Civil Service known as Advisers ; the Provincial Legislatures were suspended and the Governors assumed supreme control of administration in all matters, subject to the control of the Governor-General. The Proclamation suspending the constitutional machinery was extended till the expiration of one year at the end of war by the Amending Act passed in 1942. The Congress during its terms of 18 months established a record of creditable achievements. It successfully launched an ambitious programme of welfare work and passed useful laws to improve the lot of the common man. The Provincial Governments under the Congress regime carried out important reforms in the spheres of education, public health, rural uplift and local self-government.

### **Provincial Autonomy in Non-Congress Provinces**

After the issue of the Proclamation, the Governors induced some non-Congress groups in Orissa and N. W. F. P.



where the Congress Parties were not in absolute majorities, to form coalition Ministries. Such Ministries were formed and even though they did not enjoy a workable majority in the Legislative Assembly, they were able to function with the help of the Governor and the civil service. This was a clear case of the violation of the Instrument of Instructions issued to the Governors. Nor did the Governors refrain from frequent interference in non-Congress provinces. Their interference in the work of the popular ministries of Sind and Bengal gained sufficient notoriety. The Governor of Sind terminated the services of his Chief Minister, the late Mr. Allah Bux, on October 10, 1942, even though he enjoyed the confidence of the Legislature. This was a sequel to his renunciation of the titles conferred on him and making a number of charges against the British Government with regard to their policy towards India. The dismissal of Mr. Allah Bux was a clear violation of the principle of ministerial responsibility. Again, the Governor of Bengal literally forced the Chief Minister, Mr. A. K. Fazlul Haq, to submit his resignation in March 1943.\* Later, he issued a statement complaining that the Governor exercised his powers arbitrarily and forced decisions on the Ministers. Dr. Shyama Prasad Mookerjee, a Minister of the Bengal Cabinet, also made a similar statement, quoting many instances of gubernatorial interference. He resigned on that issue. In other non-Congress Provinces, the Ministries were unstable and there was frequent interference in their day-to-day work. Only the Unionist Ministry in the Punjab was able to function smoothly for a long time. The reason why responsible government functioned well in Congress Provinces and in

---

\*The resignation by Mr. Fazlul Haq in March 1943 was brought about in this way. Mr. Haq had made a statement in the Legislative Assembly expressing his desire to resign his post in order to facilitate the formation of an all-party Cabinet. He conveyed this message to the Governor also. The Governor asked him to resign. The Governor said that unless Mr. Haq tendered his resignation he could not ask the party leaders to form an all-party Cabinet. He assured him that he would use the letter only for showing it to party leaders. Mr. Haq agreed to sign the letter of resignation. The same evening Mr. Haq received a letter from the Government House informing that his resignation had been accepted.—*The Modern Review*, May 1943, p. 330.



the Punjab was due to three factors. Firstly, Congress parties in the provincial legislatures were highly disciplined and were subject to the unified control of the Central Parliamentary Board of the Congress. The Governor was bound to summon the leader of the Congress Party which was a majority party in the legislature to form the Ministry and to act according to his advice. Secondly, the Congress formed homogeneous Cabinets to foster the principle of joint responsibility and refused to form coalition cabinets with the Muslim League and other parties. Thirdly, the Ministers held office not during the pleasure of the Governor but so long as they enjoyed the confidence of the provincial legislature.

*Coupland's Views on Provincial Autonomy.* Prof. R. Coupland, in the Second Part of his *Report on the Constitutional Problem in India* remarks that (i) in non-Congress Provinces responsible government operated more or less in accordance with the intentions of those who framed the Constitution Act; (ii) Provincial Autonomy was negatived by the 'unitarian' and totalitarian policy adopted by the Congress.\* Both the propositions are a travesty of facts and carry wrong implications. The Congress view, refuting these charges, has been ably summed up by Shri K. M. Munshi in his book, *The Changing Shape of Indian Politics*.† He says the Congress formed homogeneous Cabinets in order to fulfil the intentions of the framers of the Constitution of leading India to the goal of full Dominion Self-Government. Coalition Cabinets are by their very nature weak and unstable and in India they proved a democratic facade behind which the Governor ruled through the bureaucracy."‡ The working of Coalition Cabinets in non-Congress Provinces disclosed several cases of gubernatorial interference in the work of the ministries. In some provinces, Ministers were appointed to power even though they did not command the confidence of the legislature § In prefer-

\**Indian Politics, 1936-1942. Report on the Constitutional Problem in India*, II, pp. 86 108.

†*The Changing Shape of Indian Politics*, p. 3.

‡The Chief Ministers in the Care-taker Ministries in Orissa and Assam were installed to power even when they did not enjoy support of the Legislature. The Governor of Sind, in 1946, appointed the leader of the largest party to office even when a Coalition of the parties had been formed.



ring coalition ministries to homogeneous ministries, Prof. Coupland would like to put up frauds on democracy and defeat the very purpose of responsible government.

Mr. K. M. Munshi contends that the Congress Party was not totalitarian and it only fulfilled its effective role which political parties play in a democracy. The first function of a political party is to win elections in order to capture power to implement its election pledges. The Congress Party had fought the elections to secure a speedy transfer of power from British to Indian hands. The Congress did not want to wrest power from other political parties. Its main object was to wrest power from the British. It worked to this end and held office so long as it was able to fulfil its purpose. Before assuming office, the Congress demanded an assurance from the Governors that they would not exercise their discretionary and special powers of interference in the work of the Ministries. On coming to office, the Congress established a tradition of collective responsibility. The cabinets acted as single units. Again, the Congress established a convention that the Secretary would record a summary of the conversation he had with the Governor when he saw him. The Governor was not to accord easy access to the Secretary and had to consult the Ministers first in all matters.

Mr. Munshi correctly concludes that the Congress High Command was not totalitarian because it did not seek to stifle individual freedom. The word 'totalitarian' could apply suitably to the Governor,\* and the bureaucracy who curbed the free spirit of the people and suppressed their national aspirations to self-government. It is quite true that the Congress Party maintained the best traditions of a political party and by supervising the work of the Congress Governments fostered a healthy national outlook.

---

\*Mr. K. M. Munshi mentions that the Governor's totalitarianism was preserved in the Act in many ways : (1) First, the discretionary powers of the Governor were amply preserved at all effective points. Second, his power to dismiss a minister was also preserved ; third, the Civilian Secretary had direct access to the Governor behind the Minister's back. Fourth, in matters of discipline the higher officials had a right of appeal to the Governor or the Secretary of State ; Fifth, all orders had to be issued by and under the signature of the Secretary. p. 7.



Select Bibliography

- Bisheshwar Prasad* : Origins of the Provincial Autonomy.  
*B. P. Singh Roy* : Parliamentary Government in India, pp. 180-281.  
*R. Coupland* : Indian Politics—Report on the Constitutional problem in India. Part II. pp. 41-153.  
*K. M. Munshi* : The Changing Shape of Indian Politics.  
*Jawaharlal Nehru* : The Unity of India, pp. 40-150.  
*Chintamani and Masani* : India's Constitution At Work.  
*Lord Lothian* : India Under the New Constitution Twentieth Century, September 1948.  
*Sir Maurice Gwyer* : Approaches to the Indian Constitutional Problem, India Quarterly (1948), pp. 5, 19.  
 Report of the Indian Statutory Commission, Vo. II.  
 Government of India Acts 1919 and 1935.  
 Montague-Chelmsford Report,—pp. 160-7.



## CHAPTER 7

### THE PROVINCIAL LEGISLATURES AND POLITICAL PARTIES

The Act of 1935 set up elected popular legislatures in eleven provinces. It set up second chambers in Bengal, Bihar, Bombay, Assam, United Provinces and Madras. In the rest of the provinces, *i.e.*, Punjab, Central Provinces, North-West Frontier Province, Sind and Orissa, there was a single chamber, known as the Legislative Assembly.

*Composition of the Provincial Legislature.* The number of seats in the various legislative assemblies varied from province to province. The following table gives the number of seats in each Chamber of the Provincial Legislature.

	Legislative Assembly	Legislative Council.
Madras	215	54 to 56
Bombay	175	29 to 30
Bengal	250	63 to 65
United Provinces	228	58 to 60
Punjab	175	...
Bihar	152	29 to 30
C. P. & Berar	112	...
Assam	108	21 to 22
N.-W. F. Province	50	...
Orissa	60	...
Sind	60	...

*Distribution of Seats.* The distribution of seats was determined by the Communal Award of August 4, 1932, as modified by the Poona Pact of September 25, 1932. Moham-medans, Europeans, Anglo-Indians Sikhs, and Indian Chris-tians were given a disproportionately larger number of seats than their population warranted. This is known as weigh-tage. Merchants, manufacturers, landlords and other vested interests also got special seats. The Hindus, who formed 44% of the population, were given 81 out of 250 seats in Bengal, whereas Europeans who formed  $3\frac{1}{2}$  per cent of the poplation were allotted 25 seats. This was very unfair to the Hindus.



*Method of Representation.* Members of the Legislative Assembly were directly elected by separate electorates, nominations having been completely given up. Mohammedans, Sikhs, Europeans, Anglo-Indians and Indian Christians were entitled to vote separately for candidates contesting seats assigned to each community. Separate representation was also given to women in most provinces. In the case of the Scheduled Castes, there were to be two elections, one primary and the other secondary. At the primary election only the Scheduled Caste voters could vote. They elected for every single seat four candidates. In the final elections all the voters belonging to general constituency, Hindus as well as scheduled caste members, voted and elected one representative out of the four candidates previously chosen. In the Legislative Councils, the majority of the members were elected; a small number were, however, nominated by the Governor. In Bengal and Bihar a substantial number of members of the Legislative Council (27 in Bengal, and 12 in Bihar) were elected by the Legislative Assembly by means of the single transferable vote. The franchise for the Legislative Assembly was on very low qualifications. A landlord paying Rs. 5 as land revenue, an owner of property worth Rs. 5,000, and all income-tax payers could be included in the voter's list. The right to vote at the elections to the Legislative Council was based on high property qualifications, payment of heavy income-tax, payment of a large land revenue or rent, etc.

*Tenure.* The tenure of the Legislative Assembly was five years, but the Governor had the power to extend the term and also dissolve the House. The Legislative Council was a perpetual body, not subject to dissolution. Members were elected for a term of nine years, but one-third of them retired after every three years.

*Bicameralism.* A number of arguments were advanced against the establishment of second Chambers in the provinces. Firstly, it was regarded as a retrograde step, calculated to serve as a brake on progressive, social and economic legislation. In the words of the Montford Report, "A second Chamber representing mainly landed and moneyed interests might prove too effective a barrier against legisla-



tion which affected such interests.....The delay involved in passing legislation through the two Houses would make the system far too cumbersome to contemplate for the business of provincial legislation.\* Secondly, it was held that the continuance of the communal electorates and their adoption would intensify communal differences and hinder the formation of political parties on sound lines. Thirdly, the formation of the Council as a permanent body with less frequent elections was bound to render it less responsible than it would be if there were frequent elections.

### **Working of the Bicameral System**

The actual working of the bicameral system disclosed that there arose no serious conflicts between the two Chambers in the provinces. There was a likelihood of conflict between the two Houses because they were differently composed and had a marked difference of outlook. What, however, seemed to prevent this conflict was the overwhelming majority of Congress members in the joint sittings of both the Houses. Some minor incidents of conflict occurred in Assam, U. P. and Bihar, but ultimately all these conflicts were settled amicably. In Assam, the Upper Chamber obstructed the smooth passage of the Assam Agricultural Income-tax Act. In U. P. and Bihar, there were conflicts between the two Chambers over the question of tenancy reform, but ultimately the issues were composed in joint sessions. The Bengal Legislative Council vindicated its position by bringing forward a motion drawing the attention of the Governor to the fact that his Ministers who were members of the Legislature by persistently abstaining from attending the meetings had committed a breach of privilege of the House. The Ministers gave an assurance that in future they would attend the House regularly and so the Council withdrew the motion.

### **Procedure in the Provincial Legislature**

The Governor was required to summon either Chamber at least once a year. It was provided that 12 months should not intervene between the last sitting in one session and the first sitting in the next session of a House.

---

\* *Montford Report*, pp. 166-67.



Each House in the beginning of its session elected its own Presiding Officer. The Presiding Officer of the Legislative Assembly was called the Speaker. He was elected by the members of the House. The efficient working of the House depended upon his ability to inspire confidence among all members. He was expected to be fair and just in his rulings and not to act in any such manner as to create an impression of partiality in the mind of the people. As most of the Speakers of Provincial Assemblies were drawn from active political life, they were unable to cast off their party affiliations and establish a high standard of political impartiality and non-partisanship, as in fact characterises the office of the Speaker of the House of Commons of the United Kingdom. Provision was also made for the appointment of a Deputy Speaker who was to preside in the Speaker's absence. Speaker could be removed if the majority of members passed a vote of censure against him.

Both the Houses had equal powers but the Legislative Council had no voice in the matter of grants and had no initiative in Financial Bills. Conflicts between the two Houses were settled in joint sittings.

### **Powers and Functions of the Provincial Legislatures**

The powers enjoyed by the legislature could be classified under three heads—legislative powers, financial powers and administrative powers.

*Legislative Powers.* The Provincial Legislature was empowered to make laws for the Province on all matters included in the Provincial Legislative List. The Federal Legislature could also pass laws in respect of provincial subjects, if, (i) the Chambers of the two or more provinces passed a resolution praying for such legislation ; (ii) if the Governor-General so authorised the Federal Legislature by issuing a Proclamation of Emergency and then subject to the previous sanction of the Governor-General.\*

The Provincial Legislatures could also pass laws in respect of matters enumerated in the concurrent list, but if

---

\* Section 100 (3) and Section 104 and 107 of the Govt. of India Act 1935.



there was any inconsistency between the Federal Law and the Provincial Law in the concurrent field, the Federal Law prevailed.

There were three main limitations on the powers of the Provincial Legislature. Firstly, it was a non-sovereign law-making body. It had subordinate law-making powers derived from the British Parliament and possessed no constituent powers. Secondly, it could not pass laws discriminating against British persons or British goods. Thirdly, the Governor could stop discussion with respect to any Bill, clause or amendment which was likely in his opinion to affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India or any part thereof.

Further, the Governor was empowered to legislate in many important matters. He could issue ordinances for six months and could enact Acts. He could under Section 93 suspend the Constitution and take over the administration himself. He could give his assent to a Bill or withhold it. He could reserve a Bill for the consideration of the Governor-General if he thought (i) its provisions repealed or were repugnant to the provisions of any Act of Parliament extending to British India, or (ii) if in his opinion it was to derogate from the powers of the High Court, or (iii) if it were to alter the character of the Permanent Settlement, or (iv) if he was in doubt whether it did not offend against the provisions with respect to commercial discrimination.

*Financial Powers.* The Provinces could levy taxes on things enumerated in the Provincial List. However, their powers in this respect were greatly circumscribed. Financial bills could not be introduced or moved except on the recommendation of the Governor. The Legislature had no control over that part of the expenditure which was declared *charged* on the revenues of the province. This included: (1) salary and allowances of the Governor and other expenditure relating to his office; (2) the salaries and allowances of the Ministers, Judges of the High Court and the Advocate General; (3) debt charges including interest and sinking fund charges; (4) expenditure connected with the administration of Exclud-



ed Areas\*; (5) sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; (6) any other expenditure declared by the Government of India Act of 1935 or by any Act of the Provincial Legislature to be so charged. Thus, the charged expenditure which covered about 1/5th of the total revenues of the province was excluded from the scope of the provincial legislature. The salary of the Governor and other expenditure relating to his office could not be discussed in the Legislature. If the latter rejected any demand in the votable items of expenditure, it could be restored by the Governor if the same affected the due discharge of his special responsibilities.

*Administrative Powers.* The powers of the provincial legislature were restricted in the executive sphere as well. The Governor was responsible to the Governor-General and the Secretary of State and not to the Legislature. The Legislature could control the Executive only in matters where the Governor was bound to act on the advice of his Ministers. Such matters were very few. Most of the subjects came under the coverage of his special responsibilities and discriminatory powers. The exercise of these powers seriously encroached upon the autonomy of the Legislature. The Legislature, however, could compel the resignation of the Ministry by expressing no-confidence in it. It could also explore the weakness of the Government through questions, resolutions, adjournment motions and budget debates.

From what has been said above, it might be concluded that the provincial legislatures were utterly powerless in every sphere of activity and that the Governors controlled every sphere of provincial administration. In actual fact, however, this was not wholly so. The actual working of the Constitution since April 1937, specially owing to the existence of a strong political party in the country, disclosed that the Legislatures did enjoy substantial powers and that they did effectively rule the provinces.

---

\*Certain backward areas in the Provinces were classified as Excluded Areas and they were placed under the exclusive control of the Governor.



## ROLE OF POLITICAL PARTIES IN PROVINCIAL LEGISLATURES

The party system is an integral part of parliamentary democracy. A political party is an organised group of people holding common political beliefs, who by acting together as a political unit try to capture governmental machinery to implement their policy. Democratic government is only possible if parties are organised on clear-cut economic and political issues and not on the basis of race, religion or caste. Sectional groupings of such kinds are an obstacle to the growth of democratic government. In India, unfortunately the growth of sound political parties was hindered by the communal composition of the legislature. There developed a large number of communal parties in the legislatures. The Indian National Congress was the only party which represented clear-cut economic and political issues. The Muslim League and the Hindu Mahasabha were based on communal and sectarian interests.

The Congress Party under the Act of 1935 fought the elections with a view to wrecking the Constitution from within. It accepted office only after it received a conciliatory reply from the Governor-General that the Governors would not normally interfere in the day-to-day activities of the Ministers. It formed Ministries in eight provinces out of eleven, and formed the biggest single unit in the Central Legislature. During 28 months of office, it strove hard to limit the powers of the Governor and to push forth its programme adumbrated in its Election Manifesto. The Congress captured no less than 711 seats out of 1585 in the Provincial Assemblies. In five provinces—Madras, United Provinces, the Central Provinces, Bihar, and Orissa—it obtained clear majorities.\* In Assam it was the strongest party, securing 35 seats out of 108. In the North-West Frontier Province it won 19 seats out of 50. In Bengal it won 60 seats out of 250. It was the weakest in the Punjab and Sind, where it won 18 seats out of 175 and 8 seats out of 60, respectively. The Congress Party from its inception has prided itself on

---

\*Madras 159 out of 215 ; U. P. 134 out of 228 ; C. P. 70 out of 112 ; Bihar 95 out of 152 ; Orissa 36 out of 60. Returns showing the Result of Elections in India 1937.



its non-communal character. Its membership has remained open to all communities, but its hold on the Muslims diminished with the rise of the Muslim League.

*The Muslim League.* The League was founded in 1906 to safeguard the interests of Muslims and to secure for them due representation in the legislatures and the services. The British policy of *divide et Impera* gave it all possible encouragement. The adoption of communal electorates in 1909 gave it a further fillip. Mr. Ramsay Macdonald's award of 1932 encouraged the League to demand further rights and privileges for the Muslims. It held up all national progress till its demands were met in full by the British Government in 1947.

When the Congress emerged victorious in the elections of 1937 in several provinces, the Muslim League did not achieve a comparable success. In U.P. out of a total 64 Muslim seats in the Assembly, it was able to capture only 26; in Madras out of 28 seats, it won only 9, in Bombay out of 29 seats it captured only 17 and in Bengal out of 117 Muslim seats, it could secure only 35 seats. Among the independents there were a good number of Muslim members wanting to be Ministers. The Congress decided to form homogeneous Ministries and did not agree to set up coalition ministries as that would have frustrated effective control of the government by the Congress Party. The result was that all frustrated Muslims joined the League and swelled its ranks. A change in attitude also came over Mr. Jinnah, who adopted an extremely recalcitrant attitude. He received all possible encouragement from the British Government in his demand for the creation of a separate State of Pakistan.

*The Nationalist Muslims.* Opposing the Muslim League, there were several prominent Muslims who did not agree with the reactionary and anti-national policy of the League and supported the Congress in its demand for national independence and joint electorates. Such Muslims were called Nationalist Muslims. They had several groups among them, e. g., the Jamait-ul-ulema, the Ahrars, the Red Shirts, etc. In 1940, all these groups joined together and formed the Azad Muslim Board. This Board supported the



## ROLE OF POLITICAL PARTIES IN PROVINCIAL LEGISLATURES

The party system is an integral part of parliamentary democracy. A political party is an organised group of people holding common political beliefs, who by acting together as a political unit try to capture governmental machinery to implement their policy. Democratic government is only possible if parties are organised on clear-cut economic and political issues and not on the basis of race, religion or caste. Sectional groupings of such kinds are an obstacle to the growth of democratic government. In India, unfortunately the growth of sound political parties was hindered by the communal composition of the legislature. There developed a large number of communal parties in the legislatures. The Indian National Congress was the only party which represented clear-cut economic and political issues. The Muslim League and the Hindu Mahasabha were based on communal and sectarian interests.

The Congress Party under the Act of 1935 fought the elections with a view to wrecking the Constitution from within. It accepted office only after it received a conciliatory reply from the Governor-General that the Governors would not normally interfere in the day-to-day activities of the Ministers. It formed Ministries in eight provinces out of eleven, and formed the biggest single unit in the Central Legislature. During 28 months of office, it strove hard to limit the powers of the Governor and to push forth its programme adumbrated in its Election Manifesto. The Congress captured no less than 711 seats out of 1585 in the Provincial Assemblies. In five provinces—Madras, United Provinces, the Central Provinces, Bihar, and Orissa—it obtained clear majorities.\* In Assam it was the strongest party, securing 35 seats out of 108. In the North-West Frontier Province it won 19 seats out of 50. In Bengal it won 60 seats out of 250. It was the weakest in the Punjab and Sind, where it won 18 seats out of 175 and 8 seats out of 60, respectively. The Congress Party from its inception has prided itself on

---

\*Madras 159 out of 215 ; U. P. 134 out of 228 ; C. P. 70 out of 112 ; Bihar 95 out of 152 ; Orissa 36 out of 60. Returns showing the Result of Elections in India 1937.



tions, the party was able to capture only one seat in the U. P. Assembly from the landholder's constituency.

*The Justice Party.* This was a sectarian party consisting of non-Brahmins whose aim was to safeguard their interests against the domination of Brahmins in Madras. It worked the Montford Reforms, but lost heavily to the Congress in the 1937 elections. It captured only five seats in the Madras Assembly as against 137 captured by the Congress.

*The Unionist Party.* Although predominantly Muslim in its composition, this Party was not a communal organisation. It worked the reforms under the Act of 1919 and gained considerable success in the elections of 1937, capturing 101 seats in the Punjab Legislative Assembly out of 175. It had Muslims, Hindus and Indian Christians among its members.\* The leader of the Unionist Party, Sir Sikandar Hyat Khan, formed the Ministry in the Punjab in 1937. Consequent on his death, the leadership passed on to Mr. Khizar Hayat Khan Tiwana.

### Minor Parties

*The Krishak Praja Party.* This Party fought the elections in 1937 and formed the first coalition Ministry in Bengal. Mr. Fazlul Haq, the leader of the Party, went over to the Muslim League. The Party, however, continued its existence, and after some time, Mr. Fazlul Haq broke away from the League and again assumed the leadership of the Party. He formed a new Ministry on December 16, 1940, consisting of five Muslims and four Hindus. Of the latter two were members of the 'Forward Bloc,' the third a representative of the Scheduled Castes, and the fourth, Dr. Shyama Prasad Mookerjee, a member of the Hindu Mahasabha. The Krishak Party represented rural interests and had a pro-tenant and anti-landlord bias.

---

\*The Party had 120 members in a House of 175. Its members included about two-fifths of the total number of Hindu members and more than one-half of the Sikh members besides bulk of the Muslim members and all the Indian Christians, Anglo-Indian and European members in the House. From this point of view, the Ministry could well claim to enjoy the confidence of religious minorities in this province to a greater extent than any other provincial Ministry did. Review of Punjab Administration 1937-38.



*The Radical Democratic Party.* This party could not capture any seats in the 1957 elections and, therefore, functioned mainly outside the legislature. It was led by Shri M. N. Roy, an ex-revolutionary, who on account of some ideological differences with the Congress and the Communists had decided to support the allies in their war effort. For the same reason, it was dubbed for quite some time as an anti-national party and as an agent of British imperialism.

*The Congress Socialist Party.* This party was started by some prominent Congressmen in 1934. At first it functioned as a group within the Congress, but later in 1947 it broke away from the parent body and transformed itself into a distinct Socialist Party of India. It advocated speedy nationalisation of industry and fair distribution of national wealth. The party was led by Shri Jai Prakash Narain, Acharya Narendra Dev, Achyut Patwardhan and Ashok Mehta.

#### **Relations between the Ministerial and opposition Parties in the Provincial legislatures**

The relations between the Ministerial and opposition Parties in the Provincial Legislatures were not quite happy. This was mainly due to the fact that our legislatures were ignorant of the essentials of parliamentary democracy where the majority is mindful of the interest of the minority, and the minority acquiesces in the rule of the majority. In provincial legislatures where the Ministerial Parties were in an overwhelming majority, they did not even listen to minority parties and carried out their official programmes without consulting the opposition. The minority parties also overstepped the bounds of propriety and behaved in an irresponsible manner in their criticism of the majority. Due to communal composition of the provincial legislatures, the party cleavage was very strong. The majority party being predominantly Hindu was often accused of crippling the rights of the minority, *i. e.*, the Muslims. There is evidence to show that there was no understanding and co-operation among the various parties due to differences of ideology and approach.

It will not perhaps be out of place to recall here the advice offered by Sir George Cunningham, Governor of the



North-West Frontier Province, to the members of his Assembly on March 17, 1939, regarding the true role of Ministerial party and the opposition in a legislature. He said, 'Healthy party rivalry is a stimulant both to statesmanship and to good administration. But some things should be above party politics, not because they belong to no party, but because they are common to the interests of all parties and of the whole people. The peace and order by government of the province, the equality of treatment for all classes, the maintenance of impartial and contented public services are the concern of all, of parties in power and parties in opposition. If they are to be brought in issue between parties at all, this must be done on questions of wide principle, and not for purposes of temporary tactical advantage. Even when party rivalry is acute and the struggle for votes is tense, the canons of parliamentary practice are to be respected. Criticism that is merely destructive and opposes simply for opposition's sake is an impediment and not—as it should rightly be—a stimulant to the progress we all desire. On the side of the party in power there must be readiness to seek, on the side of the Opposition the readiness to give, co-operation. Democracy has always made this demand on its adherents, and the history of many countries tells us how often, in times of anxiety and stress, this demand has been loyally fulfilled...\*

### Select Bibliography

- R. Coupland. Report on the Constitutional Problem in India II. Chapter 2, pp. 7-22. Chapters 4 & 5 pp. 26-55.  
 Simon Report, Part I.  
 Government of India Act, 1935.  
 Review of the Administration of the Punjab (1937-38); Govt. Publication.  
 Returns showing the results of Elections in India, 1937, Govt. of India publication.

---

\*Cited in *The Tribune*, March 18, 1939.



CHAPTER 8  
CENTRAL GOVERNMENT IN INDIA  
(1937-1946)

**Structure of the Central Government**

Pending the inauguration of the All-India Federation as laid down in the Government of India Act 1935, the structure of the Government from 1937 onwards was regulated by certain transitional provision based on the Government of India Act of 1919 with such modifications as were necessitated by the introduction of autonomy in the Provinces.

Before the passage of the Government of India Act of 1935, the Governor-General-in-Council exercised powers of superintendence and control over the administration of the provincial government, subject to the directions of the Secretary of State for India. These provisions were withdrawn with the establishment of responsible government in the provinces under the Act of 1935, although the Governor-General retained control over the provincial governments during the period when the Governor exercised his special powers and responsibilities.

**Governor-General's Executive Council**

The Governor-General in the discharge of his duties was assisted by an Executive Council, the members of which were appointed by the Crown for a period of 5 years.

*Composition.* The Act of 1935 did not fix the actual number of Councillors. It simply laid down that at least three members of the Council must be persons having 10 years' experience of service under the Crown in India, and one must be a barrister of England or Ireland, an advocate of Scotland or a pleader of a High Court of India of not less than 10 years' standing. Before 1921, no Indian was appointed to the Council, although the rules did not expressly exclude Indians from appointment. Till 1941, the Executive Council consisted of eight members of whom three used to be Indians. In October 1941, the strength of the



Council was increased to thirteen, out of which eight were Indians. This step was taken in pursuance of the policy of Indianisation. In 1945 the strength of the Council was further increased to 16, out of which 11 were Indians. But Indianisation of the Executive Council was not of much significance because five of the most vital Departments—Defence, Home, Finance, Foreign and Political Department, and the Railways—were still held by Britishers. It was only in 1946, when in pursuance of the Cabinet Mission Plan a National Government was constituted that the Council was completely Indianised, and the Governor-General became its constitutional head.

*The Portfolio System.* The Executive Council worked according to the Portfolio System according to which each member was given charge of one or more departments. This system was introduced in the time of Lord Canning. The Governor-General allocated work to the members and supervised and controlled their departments. The Governor-General summoned the meetings of the Council to consider important matters. These meetings were presided over by the Governor-General and in his absence by the seniormost member of the Council. The Governor-General had the power to override the Council if he considered it necessary in the interest of the maintenance of peace and tranquillity of India. Each Member was to keep the Governor-General informed of all important matters in his department and had to seek his orders in certain matters when there was a conflict of opinion with other departments or if those matters needed reference to the Secretary of State.

*Position of Executive Councillors.* The Governor-General's position was distinctly superior to that of his Councillors. They were his subordinates and in no sense colleagues.

*The Executive Council was not a Cabinet but a purely advisory body.* It lacked homogeneity, unity and collective responsibility. Its members were not drawn from a single political party but represented varying political and sectional groups. They were not appointed from amongst the members of the Legislature, although they were nominated to one of the Houses after appointment. They represented nobody



and were responsible not to the Legislature but to the Governor-General. The Governor-General could individually summon a Member and seek his advice, act on it or disregard it. However, the Council served a useful purpose because it provided the Governor-General with useful information and advice on many problems.

### The Central Legislature

*The Council of States.* The Central Legislature was bicameral consisting of a Council of States and a Legislative Assembly. The maximum strength of the Council of States was 60 members, 35 of whom were elected and the rest nominated. Out of the latter there were to be not more than 20 official members. After the separation of Burma, the Council of States' strength was reduced to 58 members. Of these 33 were elected, 16 nominated non-officials and nine nominated officials. The franchise was based on high property qualifications and was extended to those who had served as chairmen of local bodies or had enjoyed membership of University Senates. There were only 16,571 persons qualified to be voters for the Council of States in the entire country in 1935. Such a body could hardly claim to be representative. The Council of States' tenure was 5 years, although its term could be extended by the Governor-General.

*The Legislative Assembly.* Before the separation of Burma the size of the Legislative Assembly was 145, but after the vacation of Burmese seats in April 1937, the membership was reduced to 140 out of which 101 were elected, 25 were nominated officials and 14 nominated non-officials. There were 14,16,000 persons qualified to be voters for the Legislature Assembly in the entire country in 1935. The voters were enrolled in general or communal constituencies. The tenure of the Legislative Assembly was 3 years, but the Governor-General was empowered to dissolve it or extend its life. The last Legislative Assembly continued from 1934 to 1946.

*Criticism of the Council of States.* The purpose of a second chamber in all democratic countries is to serve as a check on the hasty legislation passed by the Lower House, to represent special interests not represented in the Lower House



and to exercise a stabilising influence on political life. Firstly, the Council of States served no useful purpose in this regard, because the Lower house had already very limited powers and its powers in regard to legislation and finance were seriously limited by the extraordinary powers of the Governor-General. Secondly, the Council of States was merely an oligarchical body representing wealthy landowners, merchants and reactionary elements in the country. Such a body was likely to exercise a check on the progressive forces of the country. Thirdly, it had a substantial element of nominated members who owed their seats to the favour of the Executive and could never go against the wishes of the Government. Fourthly, the provision of communal electorates was anti-national and was responsible for intensifying communal disunity in the country.

*Composition of Political Parties in Central Legislative Assembly.* The strength of the parties as they emerged after elections to the Legislative Assembly was as follows :— Congress 44, Congress Nationalists 11, Independents 22, Europeans 11, Officials 26, Nominated non-officials, 13.

### **Functions and Powers of the Central Legislature**

The two Houses enjoyed co-equal powers, except that money bills could originate only in the Legislative Assembly. Deadlocks between the Houses were resolved in joint sittings of both chambers where all members assembled and the President of the Council presided. The Central Legislature had power to make laws on Federal and Concurrent subjects listed under the Government of India Act, 1935. Its law-making powers were severely restricted by the legislative powers of the Governor-General. Prior sanction of the Governor-General was required for the introduction of bills relating to the public revenues and debts, religion and religious observances, the army, foreign affairs, etc. It had no power to make any law affecting the authority of the Parliament or to repeal any of its Acts. It had no power, without the previous sanction of the Secretary of State, to make any law empowering any court other than a High Court to pass a death sentence on any British subject, or abolish any High Court. Its financial powers were greatly restricted. More



than 4/5ths of the total budget consisted of non-votable heads of expenditure. These related to interest and sinking fund charges on loans, salaries and pensions of persons appointed by the King or the Secretary of State, salaries of the Chief Commissioners and Judicial Commissioners, expenditure on defence, political and ecclesiastical departments. Besides, the Governor-General was given extensive powers of controlling and overriding legislation. He could give his assent to, or withhold his assent from, a bill; he could stop discussion of a bill or amendment to the bill on the ground that it would affect the safety or tranquillity of British India and could certify bills to which the Assembly had refused its assent. He could also restore cuts made by the Assembly and could authorise any expenditure in an emergency without the sanction of the Legislature.

Thus, the autonomy of the Central Legislature was seriously limited by the overriding powers of the Governor-General.

#### **Working of the Central Legislature**

The two chambers of the Legislature were summoned by the Governor-General to meet at a time or place determined by him. The Governor-General appointed the President of the Council of States to preside over its deliberations. The first President of the Indian Legislature Assembly was not elected by the House but was a nominee of the Governor-General. The first elected President of the Legislative Assembly, Mr. Vithalbhai J. Patel, acted not only as an impartial chairman but utilised every opportunity to enlarge the powers of the Legislature and established traditions and conventions for the protection of the members constitutional rights.

#### **Mode of Parliamentary Control over the Executive**

In free self-governing countries the Legislative can control the Executive in numerous ways, *e.g.*, through its power over the purse, by passing motions of no-confidence, adjournment motions, by putting interpellations, etc. The Indian Legislature had no power over the purse and could not dismiss the Executive nor call it to account for its mistakes. It could only put questions, pass resolutions, or censure the



**Executive.** The executive represented nobody and was not responsible to the representatives of the people. The 1935 Act did not establish a responsible government. It merely aimed at establishing a responsive government which could be expected to listen sympathetically to the voice of criticism and reason. As most of the suggestions put forward by the Opposition were not accepted by the Government, the proceedings of the Assembly bore an air of unreality. The Congress Party early in 1935 with the help of the Independents was able to muster 55 votes against the official block of 50 votes and with the help of the Muslim votes it passed a resolution denouncing the plan of the All-India Federation as 'fundamentally bad and totally unacceptable', and demanding a prompt effort to bring about the establishment of a fully responsible government in India.

The House in February 1935 passed another resolution denouncing the Indo-British Trade Agreement by 66 votes to 58. The House rejected the Criminal Law Amendment Bill which was certified by the Governor-General. In 1938 when the general debate on the budget was to take place, Shri Bhulabhai Desai made it clear that the Congress Party, the Independents, the Congress Nationalists and the Democrats would not take part in the general discussion as a protest against the Government action in breaking the convention of allowing the House to express itself by a direct vote on the policy of the Government under the two heads of 'Defence and External Affairs.' The Assembly rejected the Finance Bill by 68 votes to 48 votes. The budget was, however, certified by the Governor-General. Between 1935 and 1940 the Governor-General had to use the power of certification not less than eight times. Thus, the Central Legislature was an influential but powerless body. It could at the most indulge in declamatory rhetoric which often fell on deaf ears and beat its head against stone walls.

#### Select Bibliography

Simon Commission Report, Volume I pp. 160-178, Volume II pp. 1-100

Montague-Chelmsford Report, pp. 140-155.

Coupland : Indian Politics, Volume 2, pp. 7-11.

K. T. Shah : Federal Structure.

D. M. Bose : Working Constitution of India.



## CHAPTER 9

### HOME GOVERNMENT OF INDIA

*Meaning.* The word 'Home Government' refers to the constitutional machinery established in England for governing India. As India was a dependency of Britain, it was but natural that the reins of power should be held by authorities in Britain and not in Delhi. Since England was the home of the British, it was known as Home Government from their point of view.

After the passage of the Government of India Act, 1858, the British Crown assumed direct responsibility of administering Indian affairs. The office of the President of the Board of Control was abolished and in its place the office of the Secretary of State for India and of his Council was created. The Secretary of State was a member of the British Cabinet. He was appointed by the Crown on the recommendation of the leader of the majority party in Parliament. As such he was subordinate to the British Parliament, and retained his seat in the Government only so long as his party enjoyed a majority in the House of Commons. He was the constitutional adviser of the Crown and also the agent of the British Parliament for discharging its responsibilities in relation to India. He was assisted in the day-to-day discharge of his duties by a Council. The Home Government represented, therefore, in the main, the Secretary of State for India and his Council.

#### **The Secretary of State for India**

*Powers under the 1919 Act.* As pointed out above, the office of the Secretary of State for India was created by the Act of 1858. He was given the power to superintend, direct and control the entire administration and revenues of India. The Central and Provincial Governments were made subordinate to him and were required to pay due obedience to all his orders. So extensive were his powers that he was known as the 'Grand Old Mughal of Whitehall'. The Act of 1919 introduced Dyarchy and thus provided for gradual relaxa-



tion of authority, transferring some functions of the Government in the provinces to Ministers responsible to the Legislature. Consequently, the Secretary of State undertook not to interfere in the 'transferred' sphere, except in matters concerning Imperial interests, or those requiring settlement of disputes between two provinces, or the discharge of functions specially imposed upon him and his Council under the Government of India Act, 1919. As regards Central subjects the authority of the Secretary of State remained unaltered except that under the Fiscal Convention the Secretary of State agreed to refrain from interfering in matters of India's commercial policy when the Government of India and the Indian Legislature were in agreement.

*Powers under the 1935 Act.* There was a significant change in the statutory powers of the Secretary of State after 1935. Under the 1935 Act, the territories in India and the Executive authority of India derived their powers directly from the Crown and not from the Secretary of State for India. The latter's powers were also curtailed because of the introduction of provincial autonomy in the provinces. There were, however, two other sections in the 1935 Act, namely, sections 54 and 14, which made the position of the Secretary of State supreme, almost to the same extent, as it was under the 1919 Act.

Section 54 empowered the Governor-General to exercise control in his discretion over the Governors when they were required to act in their discretion or to exercise their individual judgment. Section 14 provided that in those matters where the Governor-General was required to act in his discretion or to exercise his individual judgment, he was to be under the general control of and comply with such direction as he received from the Secretary of State. In this way, both the Governors and the Governor-General remained under the control of the Secretary of State in regard to their discretionary and individual judgment powers.

The discretionary and individual judgment powers of the Governors and the Governor-General covered every important aspect of Indian administration. In the federal part of the constitution alone, there were no less than 94 sections in which the Governor-General was required to act



in his discretion and 32 sections where he was required to act in his individual judgment. Similar was the case with the provinces. And then amongst the discretionary and individual judgment powers of the Governors and the Governor-General were included their special responsibilities and the latter's reserved departments. The special responsibilities covered a very wide field of Indian administration and included such matters as (1) safeguarding the peace and tranquillity of the provinces and federation, (2) safeguarding the rights of minorities, services and princes, (3) administration of excluded areas, (4) safeguarding the financial stability of the federation, and (5) prevention of discrimination, etc.

The reserved departments in the Federation included such matters as army, external affairs, tribal areas and ecclesiastical affairs. In all these matters, the Governors and the Governor-General were to be under the control of the Secretary of State and were bound to obey all his orders.

*Summary of the Powers of the Secretary of State.* The powers of the Secretary of State could then be summarised as follows :—

(1) He exercised all the powers reserved in the Crown, *e. g.*, giving his assent to or disallowing acts passed by the Legislature, ordinances passed by the Governor-General, Acts made by the Governors or Governor-General or passing of the Orders-in-Council.

(2) He exercised full control over the Governor-General and the Governors in respect of their discretionary and individual judgment powers.

(3) The appointments of Governors, the Governor-General, the C.-in-C., Judges of High Courts and the Federal Court, etc., was made mostly on his recommendation.

(4) The Government of India could not commence hostilities or conclude peace without his previous consent.

(5) He acted as the constitutional adviser of the Crown in relation to Indian States.

(6) He prepared the draft of the instrument of instructions issued to the Governors and the Governor-General.

(7) He controlled the recruitment to the Indian Civil Service, the Indian Medical Service, and the Indian Police



Service. He also recruited suitable persons to fill civil posts in connection with the discharge of any of the functions of the Governor-General in which he was required to act in his discretion, *i. e.*, defence, foreign affairs, ecclesiastical affairs, and tribal areas.

(8) He exercised supreme control over the Governor-General in case of national emergency due to the outbreak of war or internal disturbances.

*Conclusion.* On a general review of all these varied and autocratic powers, it is apparent that the Secretary of State stood out as the dominant authority in Indian constitution. He controlled the political destiny of India. Prof. K. T. Shah well summed up the powers of the Secretary of State in his book, *Federal Structure* thus : "On a general review of all the varied and substantial powers, the Secretary of state still stands out unmistakably as the most dominant authority in the Indian Constitution. His powers may not be so imposing in appearance as those of the Governor-General or Provincial Governors. But these are merely his creatures, obedient to every nod from the Jupiter of Whitehall, amenable to every hint from this juggler of Charles Street. His powers extend not merely to matters of fundamental policy ; to the protection of British vested interests ; to the safeguarding of Britain's imperialist domination. They comprise even matters of routine administration, the more important doings of the Indian Legislature, and even the appointment, payment of superannuation of certain officers in the various Indian Services or Governments. He has, in fact, all the powers and authority in the governance of India, with little or none of its responsibility."

#### **Limitations to the Powers of the Secretary of State**

The most imposing array of powers enjoyed by the Secretary of State was subject to two limitations : (1) the control exercised by the British Parliament over his action, and (2) the domineering position of the Governor-General in India.

*Subordination to Parliament.* The Secretary of State as a member of the British Cabinet was responsible to Parlia-



ment and subject to its will and authority. He could not disregard the whims and caprices of his masters. He was liable to dismissal by an adverse vote of the Legislature. As such, he had to keep his fingers on the pulse of public opinion in Parliament and the country. He could not afford to ignore the criticism or condemnation of his policy in the lobbies or the Press. In actual practice, Parliamentarians did not take an active interest in Indian affairs. The results was that the Secretary of State carried on the Indian administration according to his independent will, unfettered by the Cabinet or the Parliament.

*Influence of the Governor-General.* There was, however, another important factor that considerably limited the autocratic exercise of powers by the Secretary of State. He was separated by a distance of 6,000 miles from the actual scene of the exercise of his authority. He had no personal touch with the Indian people or the local officials. He was sometimes not even intimately acquainted with the geography of the country or the peculiar problems of this land. Naturally, therefore, it was physically and practically impossible for him to control every detail of the Indian Administration. Nor could he afford to ignore the views of the Governor-General, who was equally, if not more, an important figure in the British political life and who was generally a prominent member of the House of Lords and an intimate friend of the Prime Minister. The Governor-General was the man on the spot and a very responsible head of the executive government in this country. The Secretary of State, therefore, could not afford to ignore his wishes or act against his advice.

*Under-Secretaries of State for India.* The Secretary of State for India had two Under-Secretaries to assist him—(1) a Permanent Under-Secretary who was a member of the British civil service and held his office permanently unaffected by changes of the party in power, and (2) a Parliamentary Under-Secretary who held political office as a member of Parliament and represented the Secretary of State in that House of Parliament where the Secretary of State did not sit. He answered questions on his behalf in Parliament and acted as his political assistant.



## The Secretary of State for India and his Council

*India Council.* From the year 1858 till the passing of the 1935 Act, the Secretary of State was aided in the discharge of his duties by an India Council. It consisted of not less than eight and not more than 12 members who held office for five years (formerly for life, then seven). They were appointed by the Secretary of State. Half the total number of members of the Council were required to be persons who had served or lived in India for at least 10 years and had not left the country more than five years back. Before 1907 there were no Indian members of the Council but after this some Indians were appointed. The members received a salary of £ 1,200 a year plus £ 600 as overseas allowance (the latter for Indian members only). They could not be members of the Parliament.

*Functions of the Council.* The Council was charged with the duty of conducting, under the direction of the Secretary of State, all affairs relating to the Government of India in England. It advised the Secretary of State on larger questions of policy. The Secretary of State, and in his absence, a Vice-President, appointed by him, presided over its sittings. Except in certain cases, the opinion of the Council was not binding upon the Secretary of State and he could override its decisions whenever he thought it necessary to do so. In matters requiring secrecy, *e.g.*, war, peace, foreign policy, etc., the Secretary of State was not bound even to consult the Council. In the following matters, however, the Council possessed real powers and the Secretary of State was bound by its advice:—

(a) All questions relating to the spending of Indian revenues.

(b) Changes in the salary and rules regarding furlough and pensions of officers in India.

(c) Selection of Indians for posts in the Imperial Services and dismissal of civil and military officers.

(d) Making temporary appointments to the Viceroy's Executive Council.

In all other matters the functions of the Council were of an advisory character.



*Ineffective Body.* Originally, it was supposed that the Council would exercise some restraint on the Secretary of State for India. It was a body of permanent civil servants, having no political affiliations, and it was hoped that its expert advice on problems of administration would be followed by the Secretary of State. Certain factors, however, operated to weaken the influence of the Council on the Secretary of State. These may be stated as under:—

(1) The Council's advice was binding on the Secretary of State in relation to four matters only: in others he acted on his own initiative. He could send many urgent despatches to India without consulting his colleagues. The Secretary of state had the sole discretion to determine the urgency of any matter. This made the position of the Council extremely subordinate.

(2) A second factor which diminished the power of the Council was that members of the Council did not hold their tenure independently of the Secretary of State. They were nominated by the Secretary of State. He had also the power of reappointing Members when their term of office expired. This made the members subservient to him, because they looked forward to their boss for favour of reappointment on the expiry of their term of office.

(3) Members of the India Council were mostly retired civil and military servants of the Crown. They were more interested in their emoluments than political questions. More often than not they were out of touch with Indian political life and out of sympathy with the national aspirations of India.

(4) The Secretary of State was a member of the British Parliament and as a Cabinet Minister he enjoyed popular support. Members of the Council were bureaucrats and had no popular backing.

(5) Lastly, the extension of telegraphic communications made it possible for the Secretary of State to communicate direct with the Government of India, without turning to his Council for advice. This also explains why the Secretary of State was given the power to override his Council.

*The Council in Action.* The Council was organised into



six committees dealing with matters relating to finance, military, revenue, judicial, political and general affairs. A member of the Council had to supervise the work of two committees. Each department was manned by a Secretary recruited from the Civil Service and was assisted by other staff. The head of the department prepared a draft which was submitted to the Secretary of State for approval or necessary amendment. The members of the Council did not have administrative control over the permanent Secretaries or assistants. The latter offered their suggestions or criticism on the draft proposals independently to the Secretary of State who took appropriate action. The Secretary of State thus placed more reliance on the opinion of his permanent secretaries and assistants than on the members of the India Council. This further weakened their position.

*Criticism of the Council.* Opinion in India was emphatically against the existence of the Council, as it was reactionary in composition and served no useful purpose. Moreover, the existence of the Council was incompatible with the establishment of self-government in India. The Joint Parliamentary Committee Report wrote : "We cannot doubt that under a system of responsible government in India, the Secretary of State in Council cannot continue on the present basis. It will no longer be necessary, with the transfer of responsibilities for finance to Indian Ministers, that there should continue to be a body in the United Kingdom with a statutory control over the decisions of the Secretary of State in financial matters ; nor ought the authority of the Secretary of State extend to estimates submitted to an Indian Legislature on the advice of the Indian Ministers. But in our opinion it is still desirable that the Secretary of State should have a small body of advisers to whom he may turn for advice on financial and service matters and on matters which concern the Political Department."

#### **Advisory Body under the 1935 Act**

The Act of 1935 in accordance with the recommendations of the J. P. C. abolished the India Council but provided for a certain number of *Advisers* to the Secretary of State. These advisers were to be not less than three and not more



than six in number. They served for five years and were not eligible for reappointment. Half of them were required to be persons as had served in India for at least 10 years and had not ceased to serve in India more than two years before being appointed Advisers. The Advisers could not become members of Parliament.

They received a salary of £ 1350 a year. In addition a special subsistence allowance of £ 600 per annum was given to such members as were domiciled in India at the time of appointment.

*Functions and Powers.* The function of the Advisers was purely advisory. It was entirely left to the discretion of the Secretary of State to consult them or not. He was free to consult them individually or collectively. He was not bound to accept their advice. But in three matters, *viz.*, services, property and contracts, he was required to obtain the concurrence of at least one-half of them.

*India Council Not a Cabinet.* It would have become clear from what has been said above that the India Council was not a Cabinet. The reasons may be summarised as follows:—

(1) A Cabinet has political homogeneity and collective responsibility of the Lower House of Parliament. The India Council was heterogeneous in composition.

(2) The members of the Council were expressly forbidden from seeking membership of Parliament. They, therefore owed no responsibility to it. They were responsible only to the Secretary of State.

(3) In a Cabinet there is joint deliberation. In India Council the Secretary of State did not encourage the principle of joint deliberation. He could consult each member individually.

(4) Members of the Cabinet have popular support. Members of the Council were bureaucrats and could not claim the people's backing.

(5) Member of a Cabinet are colleagues of the Prime Minister and can influence his judgment to a considerable extent. The members of the India Council could in no way be regarded as colleagues of the Secretary of State; they were his subordinates.



(6) In a Cabinet system the permanent Secretaries have no direct access to the Prime Minister over the heads of a Cabinet Minister, but in the case of the India Council the permanent Secretaries and assistants could contact the Secretary of State directly and he placed greater reliance on their advice than on the suggestions of the members of the Council. It is thus clear that the Council did not function as a Cabinet and it was a purely superfluous and powerless body.

*Cost of Home Administration.* The expenses incurred on the salary of the Secretary of State for India on the maintenance of his Council and staff were charged on the Indian revenues from the year 1858 to 1919. The people greatly resented this severe drain on their revenues. In no other British colony was such a practice in force. From 1919 onwards, the salary of the Secretary of State for India, was, therefore, made a charge on the British Exchequer, though the expenses of his office were still borne by India (Britain contributed about £ 150,000 a year towards this sum). This was a great relief to the Indian tax-payer. It also stimulated the interest of the British Parliament in Indian affairs as at the time of passing the budget, such affairs could be discussed. In 1935 the entire expenses of the office of the Secretary of State and his Advisers were made a charge on British revenues, though the Indian Government was required to meet such part of the expenditure as was incurred by the Secretary of State in discharging the duties on behalf of the Federal Government of India.

#### HIGH COMMISSIONER FOR INDIA

*Necessity of Office.* The post of a High Commissioner for India in the United Kingdom was created in accordance with Section 29 of the Act of 1919, by an Order-in-Council dated August 13, 1920, for the due discharge of the commercial and agency functions of the Government of India. The Government of India is required to make large purchases of army materials, ammunition, aeroplanes, ships, tanks, machinery, motor buses, locomotives, railway engines, stationery, building materials, etc., worth crores of rupees from foreign markets. The task of purchasing all this mate-



rial before the creation of this office was entrusted to the Secretary of State who being himself the master of the bureaucratic government in India could not be questioned regarding the honesty or justness of the transactions carried out by him. The Secretary of State was an important member of the ministerial party in England and he owed his success to the backing of important financial and industrial interests in that country. It was, therefore, but natural for him to try to please and satisfy these important commercial interests by giving them contracts for the supply of materials wanted by the Government of India, irrespective of considerations of cheapness or good quality. This state of affairs was obviously, intolerable. It meant the infliction of an unjustifiable monetary loss on India. Hence to avoid suspicions against the Secretary of State and to provide opportunities to the Government of India for buying in the cheapest market, a provision was made for the creation of the office of High Commissioner India.

*Appointment and Salary.* Under the Act of 1919, the High Commissioner for India was appointed by the Governor-General with the approval of the Secretary of State. He was appointed for five years and was eligible for reappointment. His salary, £ 3,000 a year, was paid out of the Indian revenues. He was considered as an officer of the Government of India and was subject to its discipline, supervision and control.

*Functions.* The duties performed by the High Commissioner were as follows :—

(1) *Commercial. Purchase of Stores.* The High Commissioner procured for the Central and Provincial Governments in India and for the railways all those articles which they were required to import from abroad. He invited tenders for the supply of these goods from all the important producing countries. Regardless of political pressure, he was expected to strike his bargain in the cheapest market for India's gain.

(2) *Indian Students.* He also looked after the welfare of Indian students prosecuting their studies in England. For this purpose he maintained a large house in London, where Indian students could stay for a few weeks.



(3) *Political.* At political conferences of an Imperial and international character, and on other ceremonial occasions, he represented India and protected the interests of his Government.

The office of the High Commissioner for India still continues in London, though except in name, there is no similarity between the status and powers enjoyed by the High Commissioner under the 1919 Act and the new Constitution of India. The present High Commissioner is a trusted ambassador of his country in England, and like other ambassador, he enjoys a very high status in the diplomatic world.

### **Nature of Parliamentary Control over Indian Affairs**

The formal transfer of control of Indian administration from the hands of the East India Company into that of the British Crown took place in 1858, but even before this, the British Parliament exercised some control in the administration of Indian affairs. After every 20 years the Charters of the East India Company were renewed and at this time Parliament was able to review the administration of the Company. After 1858, Parliament was able to exercise direct control over Indian affairs through its agent the Secretary of State for India. It could also discuss Indian affairs at the time of the presentation of the report on the moral and material progress of India by the Secretary of State each year. It was also the sole authority for passing or amending the Indian Constitution. All instruments of instructions issued to the Governor-General or Governors were also submitted to Parliament for its approval before issue. All Orders-in-Council relating to the Government of India were similarly submitted to Parliament for its formal approval. Other occasions when Parliament could discuss Indian affairs were provided by some casual interpellations, adjournment motions, the passing of that part of the budget which dealt with the salary of the Secretary of State for India, or when under the 1935 Act, ordinances or proclamations of emergency issued by the Governor-General came up for consideration by the British Parliament. The Secretary of State, as the constitutional adviser of the Crown and as representative



of the British Parliament, carried on the day-to-day duties of policy-making and implementation. Parliament only acted as a 'sleepy guardian of Indian interests.'

The Secretary of State for India thus wielded the real reins of Indian administration. He enjoyed vast statutory powers. The Governor-General and the Governors were bound to obey his orders. The British Parliament was so much preoccupied with its own problems that it hardly ever took an active interest in Indian affairs. Mr. Ramsay Macdonald correctly said, "The Parliament has not been a just or watchful steward. It holds no great debates on Indian questions ; it looks after its responsibilities with far less care that it looked after the Company ; its seats are empty when it has its annual saunter through the Indian Budget". The same sentiments were expressed by Keith, when he said, a perfunctory debate attended by a handful of members with Indian interests convinced resentful Indian visitors to the Commons of the complete indifference of the British people to Indian affairs.

#### Select Bibliography

*K. T. Shah* : Federal Structure pp. 277-386

*R. Coupland* : Indian Problem, Part, I pp. 8-13

*Keith* : Constitutional History of India.



## CHAPTER 10

### LOCAL SELF-GOVERNMENT

*Meaning.* Local Self-Government may be defined as that part of the Government of the country which is concerned with local problems like supply of wholesome drinking water, pure foodstuffs, healthy residential quarters, good roads, an effective drainage system, recreation spots, etc., etc., and which is carried on by local bodies such as Panchayats, District Boards, Municipalities, Corporations, etc.

The Central Government is so much overburdened with work and it is so ignorant of the day-to-day requirements of different localities that it cannot administer the local affairs of small villages and towns efficiently. Such problems are best understood by the residents of the localities themselves. The local bodies are, therefore, a device by which local affairs are looked after by the elected representatives of those areas.

*Importance.* Local self-governing institutions are the best agency for civic education. They offer an excellent opportunity to people to get training in self-government. Such persons can bring to bear their experience and knowledge of local affairs on the solution of local problems. As only the wearer knows where the shoe pinches, the people inhabiting a particular locality know what are their problems and how best they can be solved. Decisions made by a central authority on local problems are more often likely to be improper or misleading. Local conditions differ from place to place and so a uniform system of administration imposed by the Central Government cannot fulfil the specific needs and aspirations of different localities. If there is a devolution of authority, it will relieve the burden of the Central Government and will develop a sense of responsibility among citizens to manage their own affairs themselves. It is true that in the beginning the residents of the locality may not be able to run the local administration efficiently. They may commit mistakes, but a man learns by the hard way of trial and error. Local bodies are the ideal medium for training in citizenship. The citizens develop a spirit of service,



fellowship and co-operation by working in such institutions. They begin to see that there is identity of interests between their own needs and those of their community. The duties that they are called upon to discharge develop in them the spirit of sacrifice, leadership and self-help. In order that local self-government may be a success, it is necessary to impart to the citizens the right type of training and education. Citizens should be taught to get rid of party squabbles, the sectarian outlook and the communal spirit and to work in a disinterested way for the good of the community. The Government should keep an eye on the working of local self-governing institutions, so that they may discharge their duties with efficiency and justice.

*History.* Local government was no doubt known in India from very ancient times. But very little of it survived. The old institutions deteriorated, first during the Mughal period and later under the East India Company. Under the British rule they underwent a big transformation.

Local bodies, in the sense of representative institutions functioning as training centres for citizenship, are a British creation. The first municipality to be established in India under the Charter of the East India Company was the Corporation of Madras set up in 1687. It consisted of a mayor and nominated European and Indian members of the city of Madras. This experiment did not succeed as the inhabitants opposed the levy of taxes. In 1726 the Corporation was superseded by a Mayor's Court in each of the three Presidency towns of Madras, Bombay and Calcutta. These courts were judicial and not administrative bodies. In 1793 the Governor-General-in-Council was empowered by an imperial statute to appoint justices of the peace to look after sanitation and cleanliness of the streets and to levy taxes on residents. These early measures did not, however, secure the association of residents in the administration of local affairs.

*Lord Mayo's Resolution of 1870.* It was Lord Mayo who in 1870 passed a resolution in favour of the introduction of the elective principle in the composition of the local bodies. The resolution stated, "as local interest, supervision, and care are necessary to success in the management of funds devoted to education and sanitation, medical relief and local



public works, opportunities should be afforded for the development of local self-governing institutions, and for the association of natives and Europeans to a greater extent than hereto before in the administration of local affairs."

Consequently, the size of the Councils was increased and their membership became partly elective, one-half in Bombay,  $\frac{2}{3}$  rds in Calcutta in 1876 and one half in Madras in 1878. These elected members were chosen by the rate-payers. The chairman of the Bombay Corporation was elected, but in Calcutta and Madras he was nominated by the Government. However, progress in the growth of local self-government was rather slow.

*Ripon's Resolution of 1882.* The beginning of local self-government in India is associated with the name of Lord Ripon. Before him there was no conscious movement for local self-government and no elected local bodies with independent authority. Whatever local bodies existed formed part of the local administration under official control. It was Lord Ripon who submitted proposals for the extension of local self-government to villages and towns in his famous Resolution of 1882 which is regarded as a landmark in the history of the development of local self-government in Indian. Firstly, the Resolution advocated extension of local self-government on a wide scale to relieve the Central Government of pressure of work. Secondly, it was put forward "not primarily to improve the administration but as an *instrument of political and popular education*. Lord Ripon made it clear that in the beginning, there might be maladministration, but this was to be tolerated in the wider interest of political awakening and education. Thirdly, the Resolution urged the District Officers to foster sedulously the small beginnings of independent political life in the country. The officials were to encourage public-spirited men to come forward and work and bring to bear their knowledge of local affairs upon local administration. If officials put more trust in non-official members, there was bound to be improvement in administration. Fourthly, Lord Ripon suggested that a network of local bodies should be established in every district and wherever practicable, the system of election should be introduced. Lastly, he suggested that the Government control over local



bodies should be relaxed. The Government might revise and check the work of local bodies but it should not direct them."

### **Constitutional Significance of Lord Ripon's Resolution**

It is said that Lord Ripon's resolution is a classic among the pronouncements made on the subject of local self-government. It forms the basis of all subsequent development in the history of local institutions in India. The Resolution put forward arguments in favour of the expansion of local self-government in a very convincing manner and answered the anticipated objections to the extension of the reform. It pointed out that there might be initial difficulties in administration but they could be overcome in course of time by associating intelligent men in the task of local administration. The Resolution is valuable because it put forward concrete suggestions for practical application before the Provincial Governments interested in the progress of local self-government. The later resolutions and pronouncements issued by the Government of India did not improve upon Lord Ripon's Resolution. On the other hand, they made their suggestions on the basis of the earlier document.

*Implementation of Lord Ripon's Resolution.* The Resolution of Lord Ripon led to the passage of a series of provincial Acts, establishing local bodies in rural areas and towns. But the progress fell far short of expectations. Franchise was very narrow, about 5 per cent in the urban areas and about half a per cent in the rural areas. Provincial Governments in introducing legislation departed markedly from the policy outlined in the Resolution. The local bodies were not free from official control and this reduced them to mere advisory councils. The District Officer presided over the council and served as its Executive Officer. The local bodies were very much handicapped due to their poor finances. The members had no initiative in formulating policy and there was reluctance on the part of the District Officers to trust them with powers. The municipal elections also did not attract men of repute. There was lack of enthusiasm in the people. The result was that a genuine system of local self-government did not develop. In the words of the authors of the Simon Commission Report, "In effect, outside a few



municipalities, there was in India nothing that we should recognize as local self-government of the British type before the era of Reforms."

### **Montague-Chelmsford Report on Local Self-Government**

The question of the reform of local self-government received active consideration from the distinguished authors of the Montague-Chelmsford Report. They pointed out that it is of the utmost importance to the constitutional progress of the country that every effort should be made in local bodies to extend the franchise, to arouse interest in elections, and to develop local committees so that education in citizenship may, as far as possible, be extended and everywhere begin in a practical manner.

*Resolution of the Government of India (1918).* The 1918 Government of India Resolution on local government accepted the principle laid down in the Montford Report that "there should be, as far as possible, complete popular control in local bodies and the largest possible independence from outside control." Accordingly, the Resolution recommended elected local bodies, non-official elected chairman and wider powers. It also recommended the establishment of village panchayats with limited powers.

*Progress under the 1919 and 1935 Acts.* There was considerable progress in the sphere of local self-government after the Reforms of 1919 and 1935. Various Provincial legislatures passed laws relating to the reorganisation of local bodies on a more democratic basis. In several Provinces the nominated element was completely abolished and the foundations were thereby laid of a real experiment in self-government.

### **Organization of Local Self-Government**

The Local bodies in India are organized under two heads. Village Panchayats and District Boards in rural areas, and Corporations Municipalities and small Town Committees in the urban areas. All these bodies have a predominantly elective element.

Presidency towns like Calcutta, Madras and Bombay, and some other big cities like Patna, Ahmedabad, Poona,



Mayapur, Jabalpur, Bangalore, etc., have corporations. They have large councils elected by adult citizens and by special interests. They elect their presiding officer known as Mayor. They appoint a permanent staff and heads of various services. These Corporations carry on their work independently, free from Central control.

The Municipalities exist in cities. They have Councils elected under adult franchise. The Councillors elect their own Chairman. The Municipal Committee has a chief Executive Officer who runs the municipal administration under the guidance and control of the Council. The municipalities divide themselves into small sub-committees, each committee being entrusted with work of a specific nature like building, public works, roads, water supply, education, etc. They draw their resources mainly from taxes, fees and rates.

*Village Panchayats.* The countryside is served by the District Boards and Village Panchayats. In most States, District Boards have non-official elected Chairmen. Their functions include the provision of roads and communications, primary and secondary education and medical facilities. Their main sources of income are cess on land revenue collected by the Provincial Governments, tolls on roads and ferries, and octroi duties. The Village Panchayats look after village sanitation and education and also discharge some judicial functions. The Panchayats consist of such number of members as may be determined under the Act. They are elected by the villagers.

#### **Port Trusts, Improvement Trusts and Cantonment Boards**

The Port Trusts look after the dockyards. The Improvement Trusts hold charge of slum clearance and town-building plans. The Cantonment Boards look after those areas where troops under the Central Government are stationed. These local bodies include a substantial number of nominated members, most of them being Government officials deputed to serve on these bodies.

*Working of Local Self-Government.* The working of local self-government in India has not been without its full quota of failings and faults. The local bodies have often been



called centres of inefficiency, corruption, nepotism and wasters of public funds. Yet wholesale condemnation of the system will not be quite justifiable. In the words of the authors of the Simon Commission, "In none of the various sections of the field to be surveyed have we to paint a picture of unrelieved failure or unqualified success. In every province, while a few local bodies have discharged their responsibilities with undoubted success and others have been equally conspicuous failure, the bulk lie between these extremes."

*Causes of Failure.* The chief defects in the working of the local bodies in India may thus be summarised:—

(1) Local bodies are not truly self-governing units. There is too much of official interference in their affairs. This interference, followed by frequent supersessions, reduces their autonomy to a farce.

(2) They do not have adequate financial resources. As such they cannot perform their functions satisfactorily. The system of the assessment and collection of taxes is most lax. There are cases of arrears and embezzlement, and prominent members of local bodies are the worst defaulters in this respect.

(3) The administrative machinery of the local bodies is inefficient and corrupt. This is largely the result of nepotism and very low scales of salary of the staff. Constant interference in their day-to-day administration on the part of the members and Chairmen is another contributory cause of low efficiency.

(4) Lack of civic consciousness among the people is also largely responsible for the ineffective working of our local self-governing institutions.

*Conclusion.* Attempts have been made in recent years by almost all state Governments to remove these defects. Necessary amendments have been made in the Municipal, District Board and Village Panchayat Acts to accord them greater autonomy, augment their sources of income and to reduce chances of party bickerings and mutual strife. An Inter-State Local Self-Government Body has been set up



under the Union Health Ministry to suggest ways and means to improve the working of local bodies. A Conference of Local Self-Government and Panchayat Ministers in the States is also held each year for the same purpose.

It is to be hoped that the adoption of these measures will go a long way in ensuring a smooth working of local self-government in various States.

#### **Select Bibliography**

Simon Commission Report, Volume I, Part IV, Chapter 4

Montague-Chelmsford Report

Report of the Decentralisation Committee (1908)

*M. P. Sharma*: Local Self-Government in India.



## CHAPTER 11

### THE PUBLIC SERVICES

*Importance.* The importance of public services in the life of a people cannot be over-emphasised. The modern State is not a police state ; it is a welfare State. It has to preserve not only internal security and order but also to promote education, health and economic prosperity of the people. Consequently, it needs a professional and trained body of officials to serve the needs of the people in the different branches of administration. The Ministers who form the political executive lay down the policy of the State; the public servants are entrusted with the practical task of the successful implementation of these policies. Ministers are amateurs in the art of administration. They have to rely upon permanent officials who are experts in their respective fields of governance. The latter can influence the decisions of the Ministers by giving them advice and suggestions on problems of administration. They prepare answers to parliamentary questions for the Ministers or sometimes even write speeches for them. Their influence on the Government is thus continuous and effective.

*Principles of Organization.* It is necessary to recruit honest, efficient and intelligent officials to man the Government departments, for the success of public administration is largely determined by the efficiency and integrity of its public servants. To bring this about, firstly, recruitment to the public services should be made by an impartial Civil Service Commission on the basis of an open competition. Secondly, public servants should enjoy security of tenure, good salaries and prospects of promotion. The political executive should have little control over the appointment of permanent officials because it can open the floodgates to political favouritism, patronage and nepotism. Thirdly, the public servants should keep away from party politics and should loyally carry out the orders of the party in power. They should also observe strict official secrecy. Fourthly, the Ministers should be held responsible for the faults of the



administrative staff. No mention in Parliament should be made about the subordinate staff. The Government, however, should keep a careful watch on the activities of public servants and take disciplinary action against them in cases of corruption, negligence of duty or insubordination.

### **Civil Servants and Democracy**

The object of public administration is to secure efficiency in the organization and operation of the public services. With the growth of the ideas of liberty it is felt that there should be a reconciliation between effective government and popular control. On the other hand, the complaint is often made that the modern governments tend to develop bureaucratic tendencies. Government officials develop love of power, love of routine and indifference to public opinion. One of the problems of democracy, therefore, is to make the civil service responsive to public opinion. One of the devices found useful to secure contact of Government officials with public opinion is the creation of advisory committees, representing various interests, to offer guidance and co-operation to the heads of Government departments. This process keeps the officials informed about public needs and desires and also educates the public regarding the practical difficulties of the Government. Democracy and bureaucracy are not opposed to each other; they are mutually complementary. The future of democracy depends upon its ability to maintain a fully organized bureaucracy. 'The bureaucracy itself must be responsible, not to public opinion directly, but to the established leadership of the electorate.'\*

### **Character of British Civil Service**

The British Civil Service has gained the reputation of being an incorruptible service attracting 'for relatively small reward, some of the ablest men in the country'† Through the initiative of Gladstone it was organised in 1870 on a competitive basis. The Civil Service Commission was established under orders-in-council and was empowered to regulate admissions to the service.

---

\* Wilson, *Elements of Modern Politics*, p. 394.

† Laski, *Parliamentary Govt. in England*, p. 314.



The administrative class is the pivotal and directing class of the whole civil service. It is composed of men with a university training. It is responsible for placing at the disposal of political chiefs all relevant facts and figures for enabling them to formulate policies. It does so with the greatest care and without fear or favour. Once the policy is determined by the Ministers, the services carry it out loyally whether they agree with it or not. The constitutional position of the civil servants is that they hold office during the pleasure of the Crown and enjoy normally security of tenure and a good status. They are expected to be entirely non-political and cannot express their views on controversial public questions. They are not permitted to contest seats in the House of Commons and cannot canvass for a political party. They can cast their vote quietly without making it public. The theory of the Constitution is that they should serve the Government loyally, regardless of party affiliations. In England it is possible for civil servants to serve the Government loyally and conscientiously because its members are mostly from 'the same class that rules the House of Commons.'\*

However, the civil servants in England, despite their great influence in the shaping of the departmental and national policies, have not turned into bureaucrats. Bureaucracy according to Laski, 'is the term usually applied to a system of government, the control of which is so completely in the hands of officials that their power jeopardizes the liberties of ordinary citizens'. The civil servants in England do not exercise despotic authority. They are part of the democratic form of government where abuse of authority may lead to great public resentment.

It should not be understood that the British Civil Service is free from all defects. It is said that entry into its highest cadre is not necessarily the result of academic efficiency and that it also depends on lineage and family con-

---

\* Prof. Laski is of the view that civil service in England has been able to maintain its neutrality because the civil servants and the ruling parties find themselves in agreement with the assumptions on which the social system of England rests. This co-operation may become difficult if the assumptions of social order are changed by socialism.—*Parliamentary Government in England*, pp. 317-718.



nections. Again, there is a rigid caste system in the senior cadres of the Service, and promotion from the lower cadre to the higher one is not always possible. A government servant cannot expect promotion to the highest office of Permanent Secretary to a Government Department, unless he belongs to the higher administrative cadre. This creates an immobile caste system in the Civil Service.

*The Indian Civil Service.* In contrast to the British Civil Service, its Indian counterpart, though organised on similar lines, did not breathe the spirit of democratic traditions. So far as the maintenance of law and order was concerned, it was very efficient but in so far as its dealings with the public were concerned, it was most unresponsive to public opinion. It was organised by an alien government to rule a dependent people. Its members occupied a privileged position and their conditions and terms of service were regulated by rules framed not by Indian authorities but by the Secretary of State for India. They were not imbued with the idea of national service. The provincial governments under whom they were required to work did not enjoy sufficient authority or control over them. Their administration was soulless and mechanical which damped the spirit and initiative of the people and curbed their self-confidence. In comparison, the Civil Service in Britain has never exercised such an arbitrary authority. Its members serve as part of the democratic framework of the Government and consider themselves as real servants of the people. They enter Civil Service to serve their country. Britain has built up the best tradition of parliamentary democracy and under such a system executive despotism cannot exist.

#### **History of Public Services in India upto the passing of the Act of 1919**

The history of the Indian Civil Service can be traced back to the year 1772 when the East India Company acquired the right of Diwani in Bengal, Bihar and Orissa, and took over the administration of these provinces in its own hands. It replaced the natives by European officials who began to function as Collectors for collecting revenue and administering justice. Lord Cornwallis reserved these administrative



jobs for Europeans who were regarded as members of the 'covenanted' service and had to undergo training in Haileybury College which was started in England in 1806. The Court of Directors had the power to make nominations to this service. There was great resentment against this system of nomination both in England and India. The Englishmen agitated against this practice because only the relations and friends of the Court of Directors could secure an entry into this 'heaven-born' service, and the Indians condemned it because they were excluded from its sacred portals. To pacify the latter, the Charter Act of 1833 declared that "no native would be disabled from holding any place, office, or employment simply by reason of his religion, place of birth, descent colour, or any of them." This declaration, however, proved to be only a pious hope as nothing was done to implement it. The British public could not, however, be pacified by any verbal assurances. The Company had, therefore, to bow down to public opinion and it decided in 1853 to throw open recruitment to an open competitive examination. The examination was held in London and the age-limit for the competitors was fixed at 19. Indians did not, therefore, find it possible to take advantage of this privilege as few parents could send their children to England at this young age.

*The Commission of 1887.* After the establishment of the Indian National Congress in 1885, a vigorous campaign was carried on in India for the holding of a competitive examination simultaneously in England and India for recruitment to the Civil Service. In response to this demand, a Commission was appointed which reported back in 1887. The Commission recommended the division of Civil Service into three branches : the Indian Civil Service, the Provincial Civil Service and the Subordinate Civil Service. It proposed that recruitment to the Indian Civil Service should continue to be made by the Secretary of State in England, but that the recruitment to the other two services might be made in India.

*Royal Commission of 1912.* In 1912, another Commission presided over by Lord Islington was appointed to review the question of the civil services. This Commission submitted its report in 1915 but due to the outbreak of the First World War, its implementation was delayed till 1917.



*The August Declaration.* On August 19, 1917, the Secretary of State for India made a declaration that "the aim of His Majesty's Government is the increasing association of Indians in every branch of administration." In order to implement this policy, the Montague-Chelmsford Report recommended that recruitment to the Indian Civil Service should be made in India, in addition to the one made in London. In 1921, the I. C. S. competitive examination began, therefore, to be held in Delhi.

#### Services after the Reforms of 1919

The new policy enunciated by the Act of 1919 and the introduction of dyarchy in the provinces created great apprehensions in the minds of the members of the European Civil Service. Many of them retired before the expiry of their term of office. This did not, however, prove helpful to Indians as the pace of Indianization was very slow.

*The Lee Commission.* The Government appointed a Commission in 1923 under the chairmanship of Lord Lee to examine the question of the superior services from the point of view of the newly-created situation in India. The Commission submitted its report in 1924. It recommended, firstly, that the Indian Civil, the Indian Police, the Indian Forest and the Indian Medical Services should continue to be all-India services to be recruited by the Secretary of State for India. All other all-India services, *viz.*, the Indian Educational Service, the Indian Agricultural Service, the Indian Service of Engineers, etc., may be provincialized. Secondly, the Commission recommended that by 1939 50 per cent of the all-India services should be Indianized. Thirdly, it recommended large financial concessions to European members of the services in the form of overseas allowances, free return passages home, free medical facilities, increased pensions, etc. British officers were given the option of retiring on a proportionate pension, if at any time the Department in which they were working was transferred to Ministers responsible to the Legislature. Fourthly, the Commission recommended that the Public Service Commission provided for in the Act of 1919 should be established without delay. It should consist of 5 members of proved merit, one of whom was to be the Chairman, to be appointed by the Secretary of State-in-Council.



Accordingly, a Public Service Commission was appointed in 1925. A Public Service Commission was also established in Madras in 1929. These Public Service Commissions held competitive tests to recruit persons for the Imperial and State services, respectively.

*Criticism.* The recommendations of the Lee Commission led to a storm of protest in the country. There were mainly three reasons for this. First, the Commission increased the financial burden of the Central and Provincial Governments to please the British elements of the services. It did so at a time when the Governments were faced with deficits. Second, they followed a policy of slow Indianization. Thirdly, superior services like the I. C. S., I. P., and the I. M. S. were not Indianized.

*The J. P. C's Observations on the Services.* The Indian representatives who participated in the Round Table Conference held in London made it absolutely clear that control over the superior services by the Secretary of State was incompatible with the establishment of responsible government in India. The Joint Parliamentary Committee Report observed that the rights of the services should be safeguarded under changed conditions after the establishment of responsible government in India. "The grant of responsible government to a British possession has indeed always been accompanied by conditions designed to protect the interests of those who have served the community under the old order and who may not desire to serve under the new ; but if, as we believe, the men who are now giving service to India will still be willing to put their abilities and experience at her disposal and to co-operate with those who may be called on to guide her destinies hereafter, it is equally necessary that fair and just conditions be secured to them"\*

#### **Recruitment of All-India Services under the Act of 1935**

The civil services in India formed a very important part of administrative machinery in India. They comprised the Indian Civil Service, the Indian Police Service, the Forest Service and the Medical Service. Recruitment to these services under the Act of 1935 was made by the Secretary of

---

\*J. P. C. Report, para 274.



State on the recommendation of the British Public Service Commission in England and the Federal Public Service Commission in India, both of which conducted competitive tests for this purpose. The Federal Public Service Commission had the right to be consulted on all matters relating to methods of recruitment to the civil services, on the principles to be followed in making appointments to such posts and on other matters relating to their promotions and transfers.

*Conditions of Service.* The conditions of service of civil servants were determined by rules prescribed by the Secretary of State. The civil servants could appeal to the Secretary of State against any order made by any authority in India which altered to their disadvantage any rule regulating their conditions of service. The Secretary of State was empowered to fix compensation out of Federal revenues for such civil servants who were adversely affected in their conditions of service by such alteration of rules. This provision also applied to those civil and military servants who were appointed before the enforcement of this Act by the Secretary of State-in-Council.

*Safeguards for the Services under the Act of 1935.* Indian public opinion was adverse to the claims of safeguards put forward by the services. Its members in the higher cadre were alien in personnel, spirit and outlook to the people in India. There was a strong dominating British element in the services which was totally unsympathetic to the needs and aspirations of the Indian masses. They considered themselves as bosses and not as servants of the people. However, the demands of the services for safeguards and privileges were accepted by the framers of the Government of India Act of 1935. These safeguards provided for the following : (1) protection to officers against judicial proceedings ; (2) statutory safeguards about conditions of service ; and (3) special responsibility of the Governor-General and Governors to secure to the public services all rights provided for them by the Constitution.

*Protection against Judicial Proceedings.* The civil servants enjoyed protection against prosecution and suits under section 197 of the Code of Criminal Procedure and sections 80 to 82 of the Code of Civil Procedure. No proceedings, either



civil or criminal, could be instituted against them without the sanction of the Governor-General or the Governors in their discretion. Where a civil suit was instituted against public servants in respect of anything done in their official capacity, damages or costs ordered to be paid by them were charged on the revenues of the Federation or Province. These rights could not be restricted and no bill curtailing the privileges enjoyed by public servants could be moved in the Legislature without the previous sanction of the Governor-General or the Governor, as the case may be.

*Statutory Safeguards.* The Government of India Act expressly provided that no person holding any civil post under the Crown in India could be dismissed from service by any authority subordinate to that by which he was appointed. Before such a person was dismissed or reduced in rank, he was to be given a reasonable opportunity of showing cause against the action proposed to be taken in respect of him. There were special safeguards for services recruited by the Secretary of State. The salary, allowances and pensions payable to such officers were charged on the revenues of the Federation or the Provinces, as the case might be. No rules could be framed which would adversely affect their salaries or pensions. Persons feeling aggrieved could represent their case to the Governor-General or Governor and ultimately to the Secretary of State.

Lastly, the Act of 1935 charged the Governor-General and Governors with special responsibilities to safeguard the interests of the public services and to protect their legitimate interests.

*Safeguards and the Working of Responsible Government in India.* The continued recruitment of the civil services by the Secretary of State and the special provisions regarding their special rights and privileges were incompatible with the principle of Provincial Autonomy. Dr. Shafaat Ahmed Khan points out: "Provincial self-government logically necessitates control by the Provincial Government over the appointment of its servants. A public servant cannot serve two masters. If he is appointed by the Secretary of State, it may be extremely difficult for the Provincial Government to exercise sufficient control and supervision. The authority of



such Government may be undermined and, in some cases, actually flouted by a public servant who is determined to assert his legal right".\*

Nationalist opinion in this country regarded the special safeguards in the Constitution for protecting the interests of the public services as incompatible with the working of responsible government. These safeguards tended to encourage in civil servants arrogance and vanity. They owed their appointment to the Secretary of State and could not be touched by any other authority inferior to him and so could not be depended upon to be loyal to Provincial Governments. It was felt that responsible government in India could not function successfully as long as the 'steel frame of the services', secure in their rights and accustomed to positions of power and authority, did not co-operate with the Provincial Governments. The public services contained a large element of Britishers who were unresponsive to public opinion and treated the common man with contempt and indifference. They thought in terms of their own good and carried on the administration to preserve the interests of imperial Britain. Their administration was bureaucratic, mechanical, lifeless and soulless. Another complaint was that the salaries and allowances paid to them were excessive and out of all proportion to the capacity of the country to pay. A poverty-stricken country like India could not afford to pay such high salaries to her civil servants. Indians desired a reduction in these salaries and a quick Indianization of all ranks. The fact that the civil servants were given effective safeguards in the Constitution and fat salaries served to create mistrust and apprehension in the minds of the common people against them.

*The Services and the Working of Provincial Autonomy.* Although the public services were at the beginning unimaginative, indifferent and out of touch with the nationalist aspirations of the people at large, the working of reforms brought about a great change in their outlook. They showed a spirit of accommodation and power of adaptation which was undreamt of before. They 'learned the implications of demo-

---

\* Sir Shafaat Ahmed Khan, *Indian Federation*, p. 216.



cratic control' and adjusted themselves to the new social order. With the exception of a few cases of insubordination on the part of some senior officers, the rest of the public servants co-operated with their Ministers loyally in carrying out the policy of the Government, irrespective of their personal predilections in any matter.

#### Select Bibliography

*Laski* : Parliamentary Government in England, pp. 309-359.

Simon Commission Report, Vol. I.

Joint Parliamentary Committee Report, Vol. I

The Government of India Act, 1935.

*Sir Shafaat Ahmed Khan* : The Indian Federation.



## CHAPTER 12

### PUBLIC FINANCE

#### Historical Background

*Centralisation.* During the period of the rule of the East India Company, the three Presidencies were more or less independent in so far as the management of their finances was concerned, subject only to the general control of the Home Government. From 1773 onwards began the process of centralization, and in 1833 the provinces lost their legislative powers and were brought under the complete control of the Imperial Legislative Council at Calcutta. This also meant complete financial centralization. All the revenues collected in the various provinces went into a common fund out of which allocations were made for the expenses of the local Governments.

*Lord Mayo's Policy of Decentralisation.* The first step towards financial devolution was taken in 1871 when Lord Mayo's Government according to the Resolution of 1870 transferred financial control over eight services to the Provincial Governments. These were : Police, Jails, Education, Roads, Civil Works, Medical Services and Registration. As the revenues received under these heads were not sufficient to meet the cost of administration, the provinces were granted certain annual lump-sum grants by the Central Government. If they faced a deficit they could make up the deficiency by local taxation. Any portion that remained unspent was not to lapse with the Central Government but was to remain with the Provincial Government concerned.

The scheme of Lord Mayo was not without its defects. Firstly, imperial grants to the local governments were given on the basis of expenditure in various provinces in 1870-71 and not according to their actual needs. In the words of Dr. Gian Chand, "The province which had a low level of expenditure due to its undeveloped or backward state was penalised for its unassertiveness or backwardness." Secondly, the rigidity of the financial assignment offered no induce-



ment to economy. Lastly, the provisions about raising local taxes by Local Governments led to an increase in the general burden of taxation."

Yet, Lord Mayo's scheme was successful in eliminating the conflict between the Central and Local Governments. The latter were given freedom in respect of certain details of expenditure, although the general control of the Central Government remained unchanged as before.

*Lord Lytton's Scheme.* In 1877 Lord Lytton went a step further by handing over to the provinces a whole or part of certain specified heads of revenue. He transferred certain additional heads of income and expenditure as Land Revenue, Excise, Law and Justice, General Administration and Stamps to the control of the Provincial Governments. The annual grants made to the Provincial Governments were raised and in addition a share in the revenues yielded by Excise and Stamps was given to them.

*Lord Ripon's Financial Resolution of 1880.* The next change was made during the time of Lord Ripon. He introduced two main changes in the financial arrangement. First, he divided the heads of revenue into three main categories, *viz.*, (i) Imperial (ii) Provincial, and (iii) Divided. The Imperial Heads of revenue were Customs, Salt and Opium. The Provincial Heads were receipts of general administration, and the Divided Heads were Excise, Stamps, Registration, etc. Income from the Divided Heads was to be shared between the Imperial and the Provincial Governments. The deficit in the Provincial Budgets was to be made good by the Imperial Government by assigning to the Provinces a share in the land revenues. This financial settlement was made for five years and was renewed in 1887, 1892 and 1897.

*Defects.* The scheme did not grant real fiscal autonomy to the Provinces. The arrangement was essentially administrative. The Central Government did not recognize the right of the Local Governments to raise their own revenues. The Central Government alienated revenues to Provincial Governments for five years and at the end of the term determined the next assignment, always keeping in view its prior claims on all sources of revenue.



*Lord Curzon's Settlement (1904).* Lord Curzon tried to remove the defects of the Settlement of 1882. This Settlement had three main defects. Firstly, it interfered with the continuity of provincial finance and involved long-drawn-out talks at the end of each quinquennium. Secondly, the system encouraged extravagance rather than economy,\* and thirdly, the assignment of revenue to the Provinces was never made on a logical basis. To remove these defects, Lord Curzon declared the settlement quasi-permanent. He thus gave to the Provincial Governments a permanent interest in the revenues and expenditure under their control. This scheme, however, did not interfere with the division of the heads of revenue and expenditure under three categories, *viz.*, Imperial, Divided and Provincial. The revision of the Settlements was to be made only in extreme circumstances when they appeared to be grossly unjust.

*Decentralization Commission, 1907.* Under Lord Curzon, in spite of some financial devolution, centralization in administration had reached its climax. The control of the Central Government was tightened over the entire sphere of Provincial administration. Local Governments became parts of a well-organized machine, as mere agents of the Central Government. The result was that there arose a sense of general dissatisfaction in the Provincial Governments. During the time of Lord Curzon, the political movement in India also took a new turn. Popular feelings rose against his bureaucratic methods. It was difficult for the British Government to ignore these facts. Lord Minto declared: "The time has come for a further extension of representative principles of our administration." There was need for effecting two necessary changes, first, to relieve the Central Government of its great mass of work, and second, to associate the people in the administration of the country.

The Decentralization Committee appointed in 1907 went into the question and made three important recommenda-

\*The Lieutenant-Governor of Bengal in 1896 said, "The normal feature of a provincial contract is that—two years of scheming and saving and postponement of works, two years of resumed energy on a normal scale, and one year of dissipation of balances in the fear that, if not spent, they will be annexed by the Supreme Government, directly or indirectly, at the time of revision."



tions, *viz.*, that the Governor-General should not interfere with the revenues assigned to the Provinces; that revenues be allocated to the provinces in accordance with their actual needs; and the financial powers of the Local Governments be increased.

*Changes effected in 1912.* In 1912, Lord Hardinge's Government accepted certain recommendations of the Decentralization Commission. The Government of India proceeded on the assumption that there should be some sort of equality in the matter of allocation of funds among the Provinces. The Government of India declared the financial settlements with each of the major Provinces permanent after making necessary modifications in the shares of the Local Governments. The policy of giving lump sums to the Provinces out of the surpluses of the Government of India was revised in accordance with certain principles recommended by the Commission. Local Governments were given more powers to allocate expenditure under various heads. They were given freedom to frame their budgets and under certain circumstances to budget even for a deficit. The control of the Central Government over Local Governments was confined to Divided Heads, and to the total allocation of revenue and expenditure.

Certain defects, however, continued to remain even after the changes made by the Resolution of 1912. Inequalities in provincial expenditure were not removed. Provincial Governments were not granted independent powers of taxation and borrowing. The provincial budget still required sanction of the Government of India. The Local Legislative Council was not yet supreme in this respect. The old system of 'divided' heads and the giving of 'doles' was allowed to continue with consequent opportunity to Central Government to direct the policy of the Local Government in administrative matters. The changes made in 1912 did not lead to financial autonomy.

*Financial Settlements from 1919 till 1936.* The Montford Reforms of 1919 ushered in a new era in the history of Indian finance. As the provinces were accorded partial responsibility with the introduction of dyarchy, it was felt necessary to allocate to provinces separate sources of income and heads



of expenditure so that they might be free from central interference. Accordingly the system of Divided Heads was abolished and provincial finance was separated from Central finance. Forty-seven subjects were declared to be Central subjects; more important of these being Customs, Income-Tax, Railways, Posts and Telegraphs, Opium, Salt, Military Receipts, etc. Fifty-two subjects were declared as Provincial subjects and they included Land Revenue, Stamps, Registration, Excise, Forests. The provincial Governments for the first time were granted power to levy taxes on their authority on provincial matters and to frame their own budgets. The control of Central Government over the provincial budgets was also relaxed.

*The Meston Settlement.* The abolition of 'Divided Heads' and the transfer of some lucrative sources of revenue to the Provinces led to a deficit of about Rs. 10 crores in the budget of the Central Government. A committee presided over by Lord Meston was appointed to recommend measures to cover this deficit. The Meston Committee laid down certain contributions to be paid by the different Provinces to meet this deficit. These provincial contributions proved a heavy burden on the Local Governments and all but crippled them. With the improvement of Central finances in 1928, these provincial contributions were abolished.

*Limitations on Fiscal Autonomy of Provinces under Act of 1919.* The powers of taxation and borrowing of the Provinces under the Act of 1919 were subject to certain statutory restrictions. Expenditure on Reserved subjects was under the control of the Secretary of State. Some classes of expenditure could not be sanctioned by the Governor-in-Council without the previous sanction of the Secretary of State.\* The Government of India also regulated the expen-

\*This included (i) capital expenditure upon irrigation and navigation works and upon projects of drainage, embankment and water storage, if it affected more than one province, or if the original estimate exceeded 50 lakhs; (2) A revision of permanent establishment involving additional establishment charges exceeding 5 lakhs a year; (3) Any increase in the sumptuary or furniture grant of a Governor or any expenditure on original work on his residence the estimate of which exceeded Rs. 50,000, or any expenditure upon Railway carriage or steamers for the use of a Governor.—Bisheshwar Prasad, *Origins of Provincial Autonomy*, pp. 361-62.



diture on the Transferred side if it exceeded a fixed minimum. The Provinces were also required to contribute towards the maintenance of a Famine Relief Fund and to maintain a minimum balance prescribed by the Governor-General.

*Finance under Act of 1935.* The Act of 1935 contemplated a federal system of government and finance for India and also established Provincial Autonomy. The federal sources of revenue were to consist of Customs, Excise duties (except on intoxicants), Corporation tax, Income tax, Salt tax, Stamp duties of certain kinds, Succession duties, etc., while the provincial sources of revenue consisted of Land Revenue, Excise, Taxes on agricultural incomes, Succession duties in respect of agricultural land, Capitation taxes, Taxes on luxuries and entertainment, etc. As the Provinces had no adequate finances for launching development schemes, it was proposed that the Central Government should grant them annual subsidies. The details of these were recommended by a committee presided over by Sir Otto Niemeyer, an official of the British Treasury, deputed to conduct a financial inquiry into this matter.

*Niemeyer Award.* His recommendations are popularly known as the Niemeyer Award. These provided for allocation of fixed sums to eight Provinces for different periods. The Government of India accepted these recommendations in part and issued orders-in-council on the subject, providing aid for only five of the Provinces. The most substantial aid was given to N. W. F. P., which was a backward province, and very insignificant aid was given to U. P. The Punjab got nothing under the Award.

The following aid was given to the Provinces according to the orders-in-council issued on the basis of the Niemeyer Award :—

N.-W.F. P. Rs. one crore a year ; U. P., Rs. 25 lakhs a year for the first five years from the commencement of the Constitution in the Province; Assam, Rs. 30 lakhs a year (Sir Otto recommended 45 lakhs) ; Orissa, Rs. 47 lakhs a year in the first five years after the commencement of part III, in the next four years Rs. 43 lakhs and, in every subsequent year Rs. 40 lakhs, Sind, in the first year, Rs. 110 lakhs. for the



next nine years Rs. 105 lakhs a year, in the next 20 years Rs. 80 lakhs a year, etc. etc.

*Other Financial Adjustments.* The Federal Government was to levy and collect certain taxes but to hand over the collections compulsorily to the Provinces. These taxes included duties in respect of succession to property other than agricultural land, stamp duties as were mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by rail or air, and taxes on railway fares and freights. The reason why the Federal Government was given the authority to levy and collect such taxes was to ensure uniformity of policy in these matters throughout the country. Certain taxes such as duties on salt, Federal duties of Excise and Export duties included in the Federal legislative List were entirely or in part handed over to the Provinces. In the case of export duty on jute, the Central Government was to assign to the jute-producing Provinces of Bengal, Bihar, Assam and Orissa  $62\frac{1}{2}$  per cent of the net proceeds according to the recommendations of Sir Otto Niemeyer. Again, the Federal Government was to distribute to the Provinces, after a prescribed period, 50 per cent of the net proceeds of income tax as follows: Madras 15%; Bombay 20%; Bengal 20% U. P., 15%; the Punjab 8%; Bihar 10%; C. P., 5%; Assam 2% N. W. F. P., 1%; Orissa 2% and Sind 2%.

*Provincial Finances under the 1955 Act.* The provincial revenues were mainly derived from land revenue, excise duties on liquor and other intoxicants; stamp duty on judicial documents, forests, registration and irrigation. On the expenditure side, general administration, justice, police and jails absorbed about one-third of the provincial revenues, and very little money was left for development schemes of the Provinces.

Although the list of provincial sources appears imposing the actual working of Provincial Autonomy disclosed that the Provinces did not have sufficient funds to meet their pressing needs. Generally speaking, the Federal Government had all productive and elastic sources of income at its disposal, while the Provincial Governments had burdensome and inelastic sources. Land revenue was not a sufficiently lucrative source



of income because it was collected from petty farmers and a policy of remission was adopted by most of the Provincial Governments to relieve the hard-pressed and poor peasantry. Excise was not a dependable source of revenue because of the gradual policy of prohibition introduced by Congress Ministries in the Provinces. On the other hand, the scheme of prohibition involved extra expenditure for keeping a staff to check smuggling and illicit manufacture of liquor. Consequently the provinces were not left with sufficient funds to proceed with plans of development on education, industries and agriculture. In 1938, the position of provincial finances was explained by Mr. Manohar Lal, the then Finance Minister of the Punjab. He said in his budget speech : 'Provincial Governments in India do not enjoy much elbow-room because of the narrow range of finance rigidly confined within the strictest bounds. All provincial activity has to be carried on checked at every stage by this constraining factor. Even moderate projects to push forward essential lines of progress have to be discountenanced. Increased liability for securing expenditure can be assumed only with a degree of caution that must damp the spirit of any reformer; no bold and large-scale improvements, however urgent, can be entertained. Finance, the helpmate of administration, operates as a discouraging mistress, for the dictates of finance cannot be ignored with impunity. The main sources of our revenue and the chief claims for expenditure are largely fixed and invariable.'

#### Select Bibliography

- P. J. Thomas* : Federal Finance.  
*F. Shiras* : Federal Finance in Peace and War.  
*Bisheshwar Prasad* : Origins of Provincial Autonomy.



## CHAPTER 13

### INDIA'S MARCH TO FREEDOM (1939 to 1947)

#### War and the Constitutional Crisis

*Declaration of War.* In September 1939 war broke out in Europe. Within a few hours of this declaration, the Governor-General of India without any consultation with the representatives of the Indian people declared that India, too, had entered the arena. On September 14, 1939, the Working Committee of the Indian National Congress said in a resolution : "This committee cannot associate itself or offer any co-operation in a war which is conducted on imperialistic lines and which is meant to consolidate imperialism in India or elsewhere." It called upon the British Government to declare its war aims in unequivocal terms in regard to democracy, imperialism and the new order that was envisaged\*. It also demanded that "India must be declared an independent nation and effective power should be transferred to the hands of Indians forthwith." The attitude of the Muslim League was that it would extend co-operation to the British on certain conditions, such as the recognition of the Muslim League as the only representative organisation of Muslims.† It also demanded an assurance from the British Government that "no declaration regarding constitutional advance for India would be made without the consent and approval of the All-India Muslim League nor would any Constitution be framed and finally adopted by his Majesty's Government without such consent."

*Resignations of Congress Ministries.* Lord Linlithgow consulted prominent Indian leaders and issued two statements on October 17 and November 5, 1939. The statements were a reiteration of his earlier pronouncement. As regards the war aims of the British Government, he announced that it was not seeking any material advantage for itself from the war, but was only aiming at victory. It was also aiming at

---

\* Indian Annual Register, 1939, Volume II, pp. 231.

† *Ibid*, 70.



laying the foundations of a better international system which would mean that war was not to be the inevitable lot of each succeeding generation.\* In regard to India's constitutional advance, he repeated the old promise of grant of Dominion Status at an indefinite date and proposed the expansion of his Executive Council and the formation of a War Advisory Body representative of all major political parties in British India and Indian States to meet the immediate situation. The Indian National Congress rejected this declaration as entirely unsatisfactory and called upon the Ministries in the Provinces to tender their resignations. This they did. The result was that only the Punjab, Sind and Bengal Ministries, where the Congress was in a minority, continued to function as before. The Governors declared the breakdown of the constitutional machinery in the other Provinces under section 93 and assumed to themselves all powers of administration and legislation except those of the judiciary.

*The League Stand.* The Congress called upon the British people to recognize the right of Indians to frame their own Constitution and considered that the Constituent Assembly elected on the basis of universal adult suffrage could alone solve the constitutional problem. The League did not join Congress in its demand for immediate recognition of Indian independence and opposed the Congress demand for the formation of a Constituent Assembly. It insisted that any constitutional advance must be made only in consultation with it and with its approval. The Muslim League was bitterly opposed to the Congress and on December 22, 1939, it celebrated a 'Day of Deliverance' on relinquishment of office by the Congress.

#### **August Declaration (1940)**

Meanwhile, Germany was winning rapid successes and the Allies were suffering heavy reverses. Even in such a situation the Congress did not embarrass the Government of India. Mahatma Gandhi said, "We do not seek our independence out of Britain's ruin". Jawaharlal Nehru also said, "England's difficulty is not India's opportunity". The Congress was prepared to lend its co-operation to the Govern-

---

\* Indian Annual Register, 1939, Volume II, pp. 386.



ment of India on the terms that there should be an immediate declaration of India's independence and that a National Government be formed at the centre.

The British Government did not respond favourably to the offer of the Congress. Lord Linlithgow made a declaration of policy with the approval of the British Government on August 8, 1940. It stressed three points. The first, that the British Government would assent, after the conclusion of the war, to the setting up, with the least possible delay, of a body representative of the "principal elements in India's national life" in order to devise the framework of a Constitution. The second was that such a constitution would be framed with the consent of the minorities. The third was that it was prepared to expand the Viceroy's Executive Council by the inclusion of additional nominated Indians and that a War Advisory Council composed of the representatives of Indian States and other Indians would be formed to assist in the successful prosecution of the war.

*Criticism.* The above Declaration was a matter of great constitutional significance. In it, the British Government for the first time recognized the right of Indians to frame their own constitution, thus abrogating the main principles of British rule embodied in the Government of India Acts of 1919 and 1935. However, such a declaration was hedged in by so many restrictions that it could never be implemented. The declaration was only a move to associate Indians more closely with the war effort. It provided for their inclusion in the Governor-General's Council without bringing about any change in the structure of the Central Government of India. The Executive Council of the Governor-General was reconstituted but it was not truly representative of the various political parties of the country. As such, the principal political parties rejected the August offer. Mahatma Gandhi disapproving of the August proposals wrote that 'they had widened the gulf between India, as represented by the Congress, and England'. To register a moral protest against them Mahatma Gandhi launched the individual Civil Disobedience campaign.

#### **The Cripps Offer and its Background**

The British Government did not try to reach an agree-



ment with the Indian National Congress even at a time when it was facing heavy reverses in the war. Mr. Winston Churchill in a speech on September 9, 1941, declared on behalf of the British Government that the Atlantic Charter, which respected the right of all people to choose the form of government under which they should live, did not apply to India, Burma and other parts of Empire\*. But on December 7, 1941, when Japan crippled the United States air base by a sudden attack on Pearl Harbour, a new orientation in British policy towards India was deemed necessary. On February 22, 1942, President Roosevelt explicitly declared that the Atlantic Charter applied to the whole world. He exerted diplomatic pressure on Britain for an immediate Indo-British settlement to enable the Indian people to render more effective aid in the war effort. On February 15, 1942 Singapore surrendered to the Japanese and on March 8, 1942, Rangoon also fell into their hands.

In this emergency, Mr. Churchill had to announce on March 11, 1942 the War Cabinet's unanimous decision to send Sir Stafford Cripps on a special mission to India with constitutional proposals to end the Indian deadlock and to secure India's active participation in the war effort.

*The Cripps Proposals.* The Cripps scheme may be divided into two parts, the first dealing with the constitutional goal of India after the war, and the second dealing with the interim period. In regard to the post-war period, it proposed the setting up of a Constituent Assembly with representatives of British India and the Indian States for framing the future Constitution of India. The British Government agreed to accept such a Constitution. The Constituent Assembly was to be chosen by the system of proportional representation by the Lower Houses of the Provincial Legislatures and was to be about one-tenth of the total number of members in the latter. The proposals provided that the State and the Provinces which did not accept the Constitution framed by the Constituent Assembly would enjoy the right to stay out of the Union or enter it at a later stage. Both the Union and non-acceding Provinces could enter into treaty relations with

---

\*R. Palme Dutt, *India Today*, p. 510.



the British Government and secure the status of a Dominion. Similarly, the native States would have the right to join the Union or not.

For the interim period, Mr. Cripps proposed the reconstitution of the Executive Council to include in it leaders of the principal parties in India. With the exception of defence, all powers of government were to be transferred to the 'Council.' India was to be represented on the British War Council and was to participate in the counsels of the Commonwealth and the United Nations as an equal partner.

*Criticism.* The Cripps Proposals were not acceptable to the main political parties of India. Mahatma Gandhi described them as a post-dated cheque.

*The Congress.* The Congress leaders rejected the scheme for two reasons. They criticised the interim scheme of the expanded Executive Council because it was to have no control over defence and could not function as a national Cabinet, without external interference. As regards the long-term proposals, the Congress held the view that the scheme completely ignored the ninety million people in the Indian States, who were given no voice in the framing of the Constitution. Moreover, the 'novel principle of non-accession was a severe blow to the conception of Indian unity.' It would result in the Balkanisation of India.

*The Muslim League.* The attitude of the Muslim League was just the opposite of the Congress. It held that though the proposals envisaged the possibility of more than one Union in India, they did not concede the principle of the division of India on communal lines, and that in the Constituent Assembly, as provided for in the proposals, the Muslims would be in a minority of 25 per cent. The Muslims also could not participate in a constitution-making body which was not elected by separate electorates and in which the decisions were to be taken by a bare majority.

*The Hindu Mahasabha.* The Mahasabha rejected the scheme mainly because it allowed some Provinces to stay out of the Union. It observed, "India is one and indivisible. The Mahasabha cannot be true to itself and to the best interests of Hindustan if it is party to any proposal which involves the political partition of India in any shape or form."



*The Depressed Classes.* The Depressed Classes denounced the scheme for its failure to provide the necessary safeguards to protect their interests.

*Failure of The Cripps Mission.* The Cripps Mission failed and produced a sense of frustration in the minds of Indians. The people felt that the British Government was not sincere in making these proposals and that the whole thing was done to pacify American critics. The negotiations between Sir Stafford Cripps and Indian leaders were abruptly brought to an end for reasons which must always remain a mystery. It was suggested that Mr. Churchill vetoed further talks. Louis Fisher surmised that "Cripps went because he received a kick in the back by Churchill."

*Evaluation of the Cripps Proposals.* The true significance of the Cripps Proposals has been summed up admirably by Dr. Pattabhi Sitaramayya. He says, "The proposals embodied different items palatable to different tastes. To the Congress, there was the preamble which spoke of Dominion Status, the Westminster Act, and the right to secede and, above all, the Constituent Assembly and its right to declare for secession even at the outset. To the Muslim League, there was the highly comforting provision entitling any Province to the right not to accede to the Indian Union. The Princes were not only left free to join or not to join the Union; they were also given the sole right to send representatives to the Constituent Assembly. People of the States were severely left alone, not even treated as goods and chattels, which ordinarily at any rate accompany their masters. It did not take long for the Working Committee to see through the British game. There was no intention to part with power on its part. The proposals were only a means of securing voluntary aid and participation in war effort which India was not for a moment willing to accept."

### **The Quit India Movement**

The failure of the Cripps Mission widened the gulf between the Congress and the Government. The British Government was in no mood to part with power. Mahatma Gandhi was in great anguish. In a series of articles published in his paper, *The Harijan*, he gave expression to his



views about the urgent need of British withdrawal from India. These ideas later crystallised into the 'Quit India' demand. Mahatma Gandhi urged that the British rule in India must end immediately. This would put the Allied cause on a completely moral basis.

*The Resolution.* The Working Committee at Wardha passed a resolution on July 14, 1942, expressing the substance of Mahatma Gandhi's ideas. The resolution stated, "The abortive Cripps Proposals showed in the clearest possible manner that there was no change in the British attitude towards India and that the British hold on India was in no way to be relaxed. This frustration has resulted in a rapid and widespread increase of ill-will against Britain and a growing satisfaction at the success of Japanese arms..... The Congress would change the present ill-will against Britain into good-will and make India a willing partner in a joint enterprise of securing freedom for the nations and peoples of the world..... This is only possible if India feels the glow of freedom..... The Congress representatives have tried their utmost to bring about a solution of the communal tangle. But this has been made impossible by the presence of the foreign power whose long record has been to pursue relentlessly the policy of divide and rule. Only after the ending of foreign domination and intervention can the present unreality give place to reality, and the people of India, belonging to all groups and parties, face India's problems and solve them on a mutually agreed basis....."

The resolution continued: "In making the proposals for the withdrawal of British rule from India the Congress has no desire whatsoever to embarrass Great Britain or the Allied Powers in their prosecution of war..... The Congress is, therefore, agreeable to the stationing of the armed forces of the Allies in India, should they so desire, in order to ward off and resist Japanese or other aggression, and to protect and help China..... Should, however, this appeal fail, the Congress cannot view without the gravest apprehension the continuation of the present state of affairs..... The Congress will then be reluctantly compelled to utilise all the non-violent strength it might have gathered since 1920..... Such



a widespread struggle would inevitably be under the leadership of Gandhiji”.

The A. I. C. C. met at Bombay on August 8, 1942, and endorsed and approved the above-mentioned resolution of the Working Committee. It passed a resolution calling for the immediate recognition of India's independence and the end of British rule. The resolution suggested the formation of a Provisional Government, “a composite Government representative of all the important sections of people in India,” whose primary function would be “to defend India with all the armed as well as the non-violent forces at its command”. The Provisional Government would also provide a scheme for the setting up of a Constituent Assembly which would draft a federal constitution with “the largest measure of autonomy for the federating units and with residuary powers resting in these units”. The A. I. C. C. reiterated that if the governments failed to take steps to satisfy the national demand, the people of India under the leadership of Mahatma Gandhi would launch a mass struggle of a non-violent character.

*The Movement.* The Congress was in no hurry to inaugurate the Civil Disobedience Movement before fully exploring the last chance of a peaceful and friendly settlement by talks with the Viceroy and, if necessary, by addressing China and America and other Allied Nations. The Government, however, gave the Congress no time and early on August 9, 1942, arrested Mahatma Gandhi and other top-ranking leaders of the Congress. It resorted to a policy of ruthless repression and declared Congress Committees unlawful associations. The arrest of all-India, Provincial, District and Taluka leaders of the Congress left the people without any guidance. The masses became wild with rage and maddened with fury. They began to damage railway stations, destroy cables, cut telegraph wires, and set fire to Government buildings. For three years destruction went on apace. About 250 railway stations and 500 post offices were destroyed. The Government suppressed these disorders with an iron hand. It employed Bren-guns for shooting unarmed mobs and even resorted to bombing from the air. According to official estimates, more than 60,000 persons were arrested, 18,000 detained without



trial, 940 killed, and 1630 injured through police or military firing during the last five months of 1942. It might be mentioned here that the 1942 rebellion was not pre-planned. It was a spontaneous revolutionary upsurge of the people who wanted to see the end of foreign rule in India.

### **Mahatma Gandhi's Epic Fast**

The Viceroy held Mahatma Gandhi and the Congress responsible for mass violence. Mahatma Gandhi disclaimed any sabotage that followed his arrest. He undertook a 21 days' fast to declare his faith in non-violence and to urge the Government to revise its policy in regard to India. Over this decision of Gandhiji, the whole country became apprehensive because at the advanced age of 74 he could not be expected to come out unscathed from his great self-imposed ordeal. Still, he was able to come out safe and sound from the great ordeal. The Government did not release Gandhiji during the period of his fast, and three Indian members of the Governor-General's Executive Council resigned their seats in protest. During his detention Mahatma Gandhi suffered two bereavements in the deaths of his trusted Private Secretary, Shri Mahadev Desai, and his devoted wife, Shri-mati Kasturba. In April 1944, Mahatma Gandhi fell seriously ill and in May 1944 he was released unconditionally.

### **Indian National Army**

The period which followed the curbing of the great revolt of 1942 was one of political inactivity and despair. A glorious chapter was being written, however, in the annals of history by the heroic exploits of the Indian National Army organized under the guidance of Netaji Subhas Chandra Bose, who had escaped from India in 1941. The latter collected an army of Indian prisoners in South East Asia and proclaimed the formation of the Azad Hind Government on October 21, 1943. Netaji fought against the British forces in Burma and his aim was to enter India with the Liberation Army to drive out the British. In 1943, Netaji along with soldiers advanced towards India, but unfortunately, due to lack of equipment, he had to surrender after fall of Japan. The I. N. A. prisoners were tried in India for sedition and many of them in spite of the powerful defence put up by the Congress were sentenced to long terms of imprisonment.



### **Rajaji Formula**

After his release Mahatma Gandhi continued his efforts at resolving the political deadlock in the country. He wrote a letter to Lord Wavell in which he assured him that Congress leaders were friends of Britain and that he should be permitted to meet the members of the Working Committee in detention. Lord Wavell replied that negotiations with the Government could be made only on the withdrawal by the Congress of the 'Quit India' demand and on the abandonment of the policy of non-cooperation. Mahatma Gandhi was unable to comply with this demand without consulting the Congress Working Committee. The political deadlock, therefore, continued. An effort was, however, made by Rajaji to solve the communal problem on the basis of a virtual agreement on the principle of Pakistan. The formula evolved by Rajaji which had the support of Mahatma Gandhi was forwarded to Mr. Mohammad Ali Jinnah. It read as follows :

“After the termination of the war, a Commission shall be appointed for demarcating contiguous districts in the north-west and east of India, wherein the Muslim population is in absolute majority. In the areas thus demarcated, a plebiscite of all the inhabitants held on the basis of adult suffrage or other practicable franchise shall ultimately decide the issue of separation from Hindustan. If the majority decided in favour of forming a Sovereign State separate from Hindustan, such decision shall be given effect to, without prejudice to the right of districts on the border to choose to join either State.”

The scheme of Rajaji was rejected by Mr. Jinnah who would not allow the non-Muslim majority areas to exercise their vote in deciding the issue of a separate state for Muslims.

### **The Wavell Plan and the Simla Conference**

On June 14, 1945, Mr. Leopold S. Amery, the then Secretary of State for India, made a statement in the House of Commons, stating that the responsibility of working out the new constitutional system rested on Indians themselves. He added that the offer of 1942 (Cripps proposals) still stood, but the British Government was prepared to establish a pro-



visional National Government in the interim period if the Indian parties were prepared to co-operate in the successful prosecution of war against Japan.

Lord Wavell sent out invitations to leaders at the Centre and in the Provinces to hold negotiations for the proposed expansion of his Executive Council. The proposal was to reconstitute the Executive Council so as to make it representative of the main political parties in the country. It was suggested that the Council would be entirely Indian in composition except for the Viceroy and the Commander-in-Chief. Equal representation was to be given to Caste Hindus and Muslims on the Executive Council. The latter was to be responsible not to the Legislature but to the Viceroy. The appointment of the Councillors was to be made by the Viceroy in his discretion out of the list of names submitted by the leaders of the different political parties. Such an arrangement was to be made without prejudice to the issues involved in a long-term arrangement.

*Simla Conference.* To discuss the Wavell proposals 21 leading politicians including Mahatma Gandhi and Mr. Jinnah met at Simla on June 25, 1945. The negotiations broke down owing to disagreement between the main parties regarding the composition of the Council. The Muslim League rejected the Viceroy's proposals regarding the composition of the Council. Mr. Jinnah contested the right of the Congress to nominate a Nationalist Muslim in the Cabinet. The Congress sacrificed its principles by agreeing to parity of representation embodied in the Wavell offer. Under this proposal, Hindus with 70 per cent of population strength were to be equated to Muslims who constituted less than 22 per cent of the population of India.

The Congress President requested the Viceroy to go ahead with the formation of the Coalition Cabinet in spite of League intransigence, but Lord Wavell declined to do so. This attitude of the Viceroy amounted to placing a veto in the hands of the Muslim League over the political progress of the country.

#### PARTITION AND INDEPENDENCE

The demand for partition or a separate homeland for Muslims was the logical result of the policy of separatism



pursued by the Muslim League and the policy of 'divide et impera' followed by the Britishers. In order to understand properly the *causes* that led to the Partition of India, it will be necessary to trace the growth of communalism and of separatism in the country.

### Factors in the Growth of Communalism

The communal problem in India was the result of the interaction between two factors, the rise of Indian nationalism, on the one hand, and the desire of British Imperialism to counteract it on the other. In order to checkmate Indian nationalism, the British Government counterpoised one community against another and thus produced the monster of communalism. This monster was, however, not created out of a void. The Britishers exploited the already existing differences between the two major communities and by pretending to play the role of impartial arbitrators in adjusting and satisfying their conflicting claims to a share in political power actually accentuated the differences between them.

*Divide and Rule.* Divide and rule has been the cornerstone of British administration. In the beginning, the British created a division between British India and Native India. Within British India they created a division between Hindus and Muslims. The Revolt of 1857 had clearly demonstrated to the Britishers that if the Indians remained united, British authority in India would be imperilled. After the Great Revolt the Muslims looked upon the Britishers with distrust. They held aloof from them and did not take advantage of the liberal education offered by the British Government. The latter leaned more and more on Hindu support and kept the Muslims out of the services. Another step taken by the British to drive a wedge between the major communities was the new method of the reorganisation of the Indian Army. Before 1857 there was no division in the Army on the basis of caste, or clan and the various members of the army had developed a high degree of unity. The Britishers destroyed this sentiment of unity by reorganizing the army on a class basis.

*British Hostility to Hindus after 1885.* As a result of the



exclusion of Muslims from the army and the services, the Hindus won a lead over the Muslims. English education brought the Hindus in contact with liberal ideas of democracy and freedom and inspired them with a spirit of national consciousness. The Indian National Congress though established under British patronage became highly critical of Government policies. The organized collective stand represented by the Congress constituted a new challenge to the British Government. In order to counteract the disturbing tendency, the Government felt it necessary to draw the Muslims under its protecting wings. The British Principals of M. A. O. College at Aligarh managed to create a gulf between the Hindus and the Muslims. Mr. Beck, the first English Principal of the Aligarh College, tried hard to wean Sir Syed away from nationalism and he succeeded in his objective. He freely mixed with Muslims and became popular with them. He got editorial control of the *Institute Gazette* and wrote articles against Bengalis. He also organized Anglo-Muslim Defence Association to oppose the Indian National Congress. Sir Syed under the influence of Mr. Beck decided to keep aloof from the Congress.

*The Communal Electorates.* Lord Curzon's rule had proved highly reactionary. He had complete distrust of Indian nationalism and he trod upon the nationalist aspiration of young India with impunity. His first act was to reduce the autonomy of the Calcutta Corporation and to officialise the control of the Calcutta University. The most foolish act of his viceroyalty was the partition of Bengal which was done with the avowed purpose of destroying the solidarity of Bengali nationalism and of driving a wedge between the Hindus and Muslims of Bengal.\*

The partition sent a wave of resentment throughout Bengal. To counteract the rising tempo of nationalism Lord Minto at the instance of Principal Archibald of the Aligarh

---

\*In the words of Sir Henry Cotton, "The object of the measure was to shatter the unity and to disintegrate the feelings of solidarity in the province. It was no administrative reason that lay at the root of this scheme. It was part and parcel of Lord Curzon's policy to enfeeble the growing power, and destroy the political tendencies of a patriotic spirit."



College thought of a proposal to serve as a possible counterpoise to the Congress. He received on October 1, 1906 a deputation of Muslims headed by the Aga Khan, with a demand for separate representation and weightage for the Muslims in the services and legislatures. He conceded this demand immediately, much against the wishes of Lord Morley who had suggested earlier the plan of mixed or composite electoral colleges, in which Mohammedans and Hindus were to pool their votes on the basis of the principle of proportional representation. The principle of separate electorates with reservation of seats was adopted in the Act of 1909 and it ultimately led to the partition of the country\*.

*Birth of the Muslim League.* Encouraged by the success of the deputation, the All-India Muslim League was formed in 1906 'to keep the Muslim intelligentsia and middle classes away from the dangerous politics into which the Indian National Congress was then embarking.'

The Indian National Congress itself was to blame for accepting the principle of weightage with separate electorates for Muslims under the Lucknow Pact, signed in 1916 by the Congress and the League.

The British Government went a step further by extending of separate representation for Muslims not only in Provinces where they were in a minority but also where they were in a majority.

*Communal Award.* The scheme of communal electorates was given greater impetus by the Communal Award of Ramsay Macdonald which became the basis of representation in the legislatures created by the Act of 1935. The Award threw overboard the Lucknow Pact which had granted weightage to Muslims where they were in a minority and gave them a statutory majority, weightage and also separate electorates

---

\* In Lady Minto's Diary is an extract from a letter written to Lord Minto which runs as follows :

"A very big thing has happened today, a work of statesmanship that will affect India and Indian history for many a long year. It is nothing less than the pulling back of sixty-two millions of people from joining the ranks of the seditious opposition."—Lady Minto Diary, pp. 47-48.



even where they were in a majority. The object of the Award was primarily to widen the gulf between the two communities.

*Failure of the Congress to form Coalition Ministries with the League in 1937.* Another factor which further estranged relations between the Hindus and the Muslims was the failure on the part of the Congress where it was in a majority to form coalition Ministries with the Muslim League. Mr. Jinnah expressed a desire for co-operation with the Congress on the basis of a genuine coalition. The Congress said that it was not prepared to include Muslim League members in Ministries, unless they ceased to function as a separate group and became part and parcel of the Congress party. The League felt discomfited by this attitude and exclusion from office. This widened the gulf between the two communities. Mr. Jinnah criticised the Congress, saying, "The present leadership of the Congress is responsible for alienating the Mussalmans of India more and more by pursuing a policy which is exclusively Hindu, and since they have formed governments in six provinces where they are in majority, they have by their words, deeds and programme shown that Mussalmans cannot expect any justice or fairplay at their hands."

*Congress Mass Contact Movement.* Another factor which intensified the alienation of the Muslim League was the 'Mass Contact' movement launched by the Congress under the leadership of Pandit Jawaharlal Nehru. Pandit Nehru wanted through this movement to bring the Muslims into the Congress fold. Mr. Jinnah considered such a move as a threat to the existence of the League. In order to attract Muslims to its fold the League raised the bogey of 'Islam in danger' and characterised the Congress as a party of Hindus which would tyrannize the Muslims. The League also worked up emotional feelings of the Muslims against the Hindus. It complained that Muslims in various Congress Ministries had been unjustly treated by the Government and they had suffered greatly from Hindu tyranny. The Congress offered to have these charges investigated impartially but the League preferred to seek redress from the Viceroy. It did not care to ascertain the genuineness of the charges but exploited them to rouse communal fury against the Hindus. Such commu-



nal propaganda resulted in immense popularity for the Muslim League and the desertion of Muslim members from the Congress. This tendency continued until the Muslims started demanding a separate state for themselves from 1937 onwards.

### History of the Muslim League Demand for Pakistan

The origin of the demand for Pakistan can be traced back to Sri Muhammad Iqbal, the great Muslim poet. In his presidential address to the Muslim League in 1930, he said, "I would like to see the Punjab, North-West Frontier Province, Sind and Baluchistan amalgamated into a single state. Self-government within the British Empire, the formation of a consolidated North-West Indian Muslim state appears to me to be the final destiny of the Muslims at least of North-West India."

Early in 1933, a similar plan for the formation of Pakistan was suggested by a Muslim undergraduate, Rahamat Ali, at Cambridge. His scheme was received coldly by Zafarullah Khan who dismissed it as 'chimerical and impracticable.' The same scheme, however, received attention in 1938 by the Sind Provincial Muslim League Conference.

*The Lahore Session.* On March 23, 1940, the All-India Muslim League at its Lahore session formulated its demand for Pakistan in these words, "It is the considered view of this session of the All-India Muslim League that no constitutional scheme would be workable in this country or acceptable to Muslims unless it is designed on the following basic principle, *viz.*, that geographically contiguous units are demarcated into regions which should be constituted, with such territorial readjustments as may be necessary, that the areas in which the Muslims are numerically in majority, as in the north-western and eastern zones of India, should be grouped to constitute independent states in which the constituent units shall be antonomous and sovereign.

"That adequate, effective and mandatory safeguards should be specifically provided in the Constitution for minorities in these units and in these regions for the protection of their religious, cultural economic, political, administrative and other rights and interests in consultation



with them, and in other parts of India where the Mussalmans are in a minority, adequate, effective and mandatory safeguards shall be specifically provided in the constitution for them and other minorities for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them."

The resolution authorized the League Working Committee to draw up a Constitution based on the above principles. The respective Muslim Zones were to be vested with all powers including defence, external affairs, communications, customs and other subjects necessary for the purpose.

Mr. Jinnah stated that Pakistan would comprise the existing provinces of the North-West Frontier Province, Baluchistan, Sind and the Punjab in the north-west, and Assam and Bengal in the east.

*The Two-Nation Theory.* The Muslim demand for Pakistan was based on the two-nation theory. While presiding over the Muslim League session in Lahore in 1940, Mr. Jinnah said, "Islam and Hinduism are not religions in the strict sense of the term, but are, in fact, different and distinct social orders, and it is a dream that the Hindus and Muslims can ever evolve a common nationality, and this misconception of one nation has gone far beyond the limits and is the cause of most of our troubles and will lead India to destruction if we fail to revise our notions in time. The Hindus and Muslims belong to two different religions, philosophies, social customs, literatures. They neither intermarry nor interdine, and, indeed, they belong to two different civilizations which are based mainly on conflicting ideas and conceptions. Their concepts of life are different. It is quite clear that Hindus and Mussalmans derive their inspiration from different sources of history. They have different epics, different heroes, and different episodes. Very often the hero of one is the foe of the other, and, likewise, their victories and defeats overlap. To yoke together two such nations under a single State, one as a numerical minority and the other as a majority, must lead to growing discontent and final destruction of any fabric that may be so built up for the government of such a State."



The Muslim League, therefore, demanded partition of India in recognition of the Muslims' right of self-determination. In their 'home land' they wanted freedom to decide their own affairs as an independent nation without interference by any outside authority. They were, however, prepared to provide constitutional safeguards for minorities on the basis of reciprocity. They were also prepared to negotiate a treaty of alliance with Hindustan as a free and independent State on specific matters.

*Hindu Mahasabha's Views on Two-Nation Theory.* The Hindu Mahasabha, although a great opponent of the League's demand for Pakistan, recognized the Indian Muslims as a nation. Veer Savarkar presiding over the Hindu Mahasabha session held at Ahmedabad in 1937 declared, India can not be assumed today to be a unitarian and homogeneous nation but on the contrary there are two nations in the main, the Hindus and the Muslims." Savarkar, however, would not recognize the Muslim's demand for a Muslim homeland. India was the exclusive homeland of the Hindus. Muslims were treated as alien residents having full protection from the State but having no rights of citizenship.

*Dr. Ambedkar's View.* Dr. B. R. Ambedkar held the view that the Muslims were not merely a community but a nation and had a right to demand separation. He held the view that the predominantly Muslim areas could be set up as independent Muslim States. The areas could be made homogeneous with transfer of population.

*Weakness of the Two-Nation Theory.* Nationality constitutes and implies essentially a spiritual sentiment of unity. Many factors such as geographical, racial, common language, common culture, common history and traditions promote national feelings. Religion is also one of the factors in fostering this unity but it is not the sole factor. Hindus and Muslims do not differ in large measure in their racial affiliations. Most of the Muslims in India are descendants of Hindu converts to Islam. Mere change in religion cannot bring about a change in their nationality. In spite of the so-called differences between Hindus and Muslims pointed out by Mr. Jinnah, there is no denying the fact that the two communities have lived together side by side for centuries and have



influenced each other in several ways. Mahatma Gandhi and other Congress leaders rejected the Muslim League's theory that religion was the determinant of a nation. Gandhiji remarked: "The two-nation theory is an untruth. The vast majority of Muslims of India are converts to Islam or are descendants of converts. A Bengali Muslim speaks the same tongue that a Bengali Hindu does, eats the same food, has the same amusements as his Hindu neighbour. They dress alike.....The Hindu law of inheritance governs many Muslim groups.....Hindus and Muslims of India are not two nations. Those whom God made one, man will never be able to divide\*.

*Problem of National Minorities.* The two-nation theory completely ignores the problem of national minorities that will exist in the two States of Hindustan and Pakistan. 'Both the States will be cursed with a well-knit minority of doubtful loyalty to the State.† The Muslim State would look upon the Hindu minorities with suspicion and the Hindu State would distrust its Muslim nationals. The problem of national minorities in the two States will embitter the relations between the two States.

*Mono-National State versus Multi-National States.* The tendency in the world today is towards larger federations instead of small national states. If India were split up into a number of States formed on the basis of national groups, such States would be very weak. They could only exist as satellites of larger nations. The existence of multi-national States like Soviet Russia and Switzerland goes to prove that small nationalities can co-exist peacefully under the federal form of government without sacrificing the autonomy of the cultural groups.

*Opposition to Pakistan Demand.* The demand for Pakistan was vehemently opposed not only by the Indian National Congress and the liberals but also by nationalist Muslims. The Jamiat-e-Ulema-e-Hind strongly criticised the demand for partition and asserted that every Muslim from the national point of view was an Indian. The other Muslim

\*K. M. Ashraf, *Pakistan* (1940), pp. 75.

†*The Communal Triangle in India*, pp. 219.



organisations, such as, Majlis-e-Ahrar-e-Hind and the Khudai-Khimatgars of N.W.F.P., the nationalist Muslims of Baluchistan and the Momins and the Shias, bitterly criticised the Pakistan scheme. The opposition to Pakistan, however, proved ineffectual for two reasons. Firstly, the ignorant and innocent Muslims were swayed by the communal propaganda of the Muslim League. Secondly, the British authorities frustrated all attempts at securing Hindu-Muslim unity.

*British Hand in the Creation of Pakistan.* It has already been explained earlier how the separatist idea received encouragement at the hands of the British. The foundations of the movement for Pakistan were laid during the period of the Round Table Conferences. Dr. J. Coatman in his book 'Years of Destiny,' published in 1932, wrote: "In place of a strong, united India there might be brought into being a powerful Mohamedan state in the North and North-West, with its eye definitely turned away from India."\* Dr. Shaukatullah Ansari in his book, 'Pakistan—The Problem of India,' explains that the British during the third Round Table Conference were more interested in the creation of Pakistan than the Muslims who were content to demand only safeguards for their rights as a minority.†

British sympathy for Pakistan was revealed clearly in the Cripps proposals already referred to. They recognised the right of non-accession on the part of any existing British Indian Province.

Many British statesmen and writers also advocated the formation of Pakistan. Thus, Prof R. Coupland of Oxford University advanced a number of cogent reasons to justify the creation of Pakistan. He said: (1) Firstly, 'partition would resolve that complex of pride and fear which has been the chief cause of widening the Hindu-Muslim schism.' It would eliminate the fear of Hindu Raj and would minister to the pride of Muslims by 'converting them from a minority in one great State into a majority in two smaller ones and by recognizing that they are not merely a community in a composite Indian nation but a nation by themselves.'

\*Coatman, *Years of Destiny*, pp. 230-31.

†Ansari, *Pakistan—The Problem of India*, pp. 4-7.



entitled to its national independence in its national homeland.' Moreover, Partition would give Muslims a pride of place in the world. 'They would stand side by side with the Muslim States of the Middle East. If they submit to the Hindu majority in an isolated India, they would be doomed to the fate of minorities in Europe.'

(2) Secondly, Partition would solve the minority problem throughout India. Minorities would enjoy the same rights in each State on the basis of reciprocity. Majorities will discharge their responsibility of creating a sense of security among minorities.

(3) Thirdly, Partition would ease the problem of defence for India. 'The North-West Frontier will lose all importance once a Muslim state is established in the North-West. The tribesmen and the people beyond the frontier are all Muslims. They will lose all religious and political fervour for Jihad against non-Muslims once they find that they had to reckon with their brothers in Islam..... Moreover, the position could be stabilised by concluding non-aggression treaties.'

(4) Fourthly, 'in an undivided India, when military organization is in Indian and mainly Hindu hands, the proportion of Muslims in the Indian army is bound to be reduced.....It would strengthen the consciousness of inferiority in Muslim minds and would make them less able to resist the moral pressure of Hinduism.'

(5) Fifthly, 'by Partition and only by Partition, Indian Muslims can acquire the power of economic self-determination.' Hindu-Muslim antagonism has always had its economic side, and one of the reasons why Muslims feared Hindu Raj was that it would give Hindus economic power of dominating the Muslims in all parts of India.

#### **'Criticism of the Pakistan Demand**

The above arguments put forth by Prof. Coupland in defence of Pakistan have been ably answered by Dr. Rajendra Prasad in his book, 'India Divided.'

Replying to the first charge, Dr. Prasad says that backwardness of Muslims was the result of British rule and could not be attributed in any sense to the Hindus or other non-



Muslims' abuse of political power. No doubt the British created antagonism between Hindus and Muslims as it suited their policy of 'divide and rule.'

Secondly, the creation of two new Muslim States out of India would by no means solve the problem of minorities in either State. The expedient of exchange of population between the Muslim and non-Muslim zones has been ruled out as impracticable both on financial and human grounds. The non-Muslim minorities in Muslim zones would be 25 to 38% in the North Western zone and 31 to 48% in the eastern zone as against 13.22% and 10.75% of Muslims in the two Non-Muslim zones. The creation of independent States would not solve the minority problem; on the other hand, it would make it difficult of solution. Minorities will become suspect in the eyes of the independent States and would become a source of friction between the two States.

The establishment of Pakistan would neither ease the problem of defence of the North-West or Eastern Frontier of India. During Muslim rule in India, Muslims from outside attacked Muslims in India and Muslim rulers in India had effectively to guard the frontiers against external attack. Again the problem of defence of the frontiers of India would become difficult because of the concentration of Muslims on the frontier actuated by religious and political fervour for Jihad against non-Muslims in India. Partition would involve huge expenditure on the part of the two States to maintain defence against aggressors from outside India and also between Muslims and Non-Muslim States.

Lastly, it may be pointed out that economic superiority of the Hindus was in no way due to their political power. The Hindus had risen in industry by dint of their ability and enterprise. The Muslims, on the other hand, enjoyed political patronage of the British and remained in office in Pakistan provinces for at least eight years continuously before Partition.

#### **Cabinet Mission and After**

In August 1945, the Labour Government came to power in England with Mr. Attlee as Prime Minister. Very soon, it realized the urgency of the solution of the constitutional



deadlock in India. It sent a Parliamentary Delegation to India 'to collect first-hand impressions about the political situation in the country. On return to England, the Delegation impressed upon the Government the need for taking immediate steps to quit India. On February 19, 1946, the British Government made an important announcement about their decision to send a special Cabinet Mission to India consisting of Lord Pethic Lawrence, (Secretary of State for India), Sir Stafford Cripps, (President of the Board of Trade) and Mr. A. V. Alexander (First Lord of the Admiralty) to negotiate with prominent Indian political leaders about setting up a Constituent Assembly and establishing an Executive Council having the support of the main political parties. Mr. Attlee, on March 15, 1946, declared in the House of Commons that the 'British Government were mindful of the rights of the minorities but they could not allow a minority to place permanent veto on the advance of the majority.' This was a real turning point in the history of Indo-British relationship. For the first time, the British Government made a declaration of its determination to solve the Indian constitutional problem.

#### **The Cabinet Mission Plan, May 16, 1946**

The Cabinet Mission arrived in Karachi on March 23, 1946. It remained in India till June 29. The members of the Mission made the most strenuous efforts at bringing about a settlement among the Congress and the Muslim League, but there was no agreement among the two parties about the machinery for Constitution-making and the formation of an interim Government. The League insisted on the creation of a sovereign State of Pakistan comprising the six north-eastern and north-western Provinces of India. The Congress desired the formation of a Federal form of government with a strong Centre. The Cabinet Mission, having failed in its efforts to effect an agreement between the parties, issued a long statement on May 16 containing proposals which they described as 'recommendations' as distinguished from an award. The proposals outlined the establishment of the Constituent Assembly and its procedure regarding the governing principles of a future constitution. They also provided for the setting up of an Interim Government,



having the support of the major political parties, 'to carry on the administration of British India until such time as a new Constitution can be brought into being'. The Cabinet Mission Plan was thus an attempt to meet half way the points of view of the Congress and the League.

*Rejection of Pakistan.* The Mission rejected the Muslim League demand for Pakistan in terms of its Lahore Resolution. It neither accepted the larger Pakistan of the six north-western and north-eastern Provinces, nor a smaller Pakistan to include the Muslim majority areas of these Provinces. The Mission believed that the setting up of such States 'would not solve the communal problem', as even after Partition, substantial minorities belonging to the two communities would remain in the two States. Moreover, both States would suffer from serious administrative, economic and military disadvantages.

*Union of India.* The Plan proposed the formation of a Federal Union, consisting of British Indian Provinces and Indian States. In order to allay the fears of the Muslim League, certain concessions were made to it. Firstly, it was proposed to establish a weak Central Government empowered to administer Foreign Affairs, Defence and Communications and to raise the necessary finances for these subjects. Secondly, to safeguard Muslim interests, it was provided that 'any question raising a major communal issue in the Legislature should require for its notification a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting'. Thirdly, the Plan proposed that Provinces should be free to form groups with executives and legislatures, and each group could determine the Provincial subjects to be taken in common. The six Hindu majority Provinces (Madras, Bombay, C. P., U. P., Bihar and Orissa) would form Group A. The Muslim majority Provinces in the North-West (The Punjab, the N. W. F. P., Sind) would form Group B. Bengal and Assam would form Group C. Delhi, Ajmer-Merwara and Coorg as the Chief Commissioner's Provinces were to join Group A. But British Baluchistan was to join Group B. Fourthly, it was also laid down that a Province could, by a majority of votes in the Legislative Assembly,



call for a reconsideration of the terms of the Constitution after an initial period of 10 years and at 10-yearly intervals thereafter.

*Provision for Interim Government.* Pending the completion of the work of constitution-making, the Cabinet Mission proposed the setting up of an Interim Government having the support of major political parties, in which all portfolios would be held by Indians. The Cabinet was to consist of 14 members, of whom six were to come from the Congress, including a Scheduled Castes member ; five from the Muslim League ; one Sikh, one Parsi, and one Indian Christian.

*Provision for Constitution-making Body.* The Plan outlined a scheme for the setting up of a constitution-making body. It was to be elected by the Provincial Legislative Assemblies, and the Provinces were to be represented in it on the basis of their populations, roughly in the ratio of one representative to one million people. Seats allocated to the Provinces were divided into three sections, *viz.*, General, Muslims and Sikhs, and elected members of these communities in the Provincial Assemblies were to elect their representatives to the Constituent Assembly. On this basis, 292 representatives were to be elected from the British Indian Provinces (210 General, 78 Muslims and four Sikhs), 93 representatives from the States, three from the Chief Commissioner's Provinces and one from British Baluchistan.

*The Sections.* The Plan provided that the Constituent Assembly would be split up into three sections, designated as A, B, and C. Section A comprised Hindu majority regions (Madras, Bombay, United Provinces, Bihar, Central Provinces and Orissa). This Section was allocated 187 seats, which included 167 general and 20 Muslim seats. Section B represented the North-Western majority region (The Punjab, N. W. F. P., Sind and Baluchistan). It was allocated 35 seats comprising nine general seats; 22 Muslim seats and four Sikh seats. Section C represented Bengal and Assam, another Muslim majority region. It was allocated 70 seats including 34 general and 36 Muslim seats. These sections were to frame the constitutions of their constituent Provinces as well as decide the range of powers to be enjoyed in common by the Groups. After this the Groups were to reunite and to



frame the Constitution of the Union. The Provinces were given the right to opt out of the Group to which they were assigned by a vote of their legislature constituted after the first general elections under the new Constitution.

The Plan with regard to the Indian States declared that under the new Constitution paramountcy would cease and 'the void will be filled by the States entering into federal relationship with the successive government or governments in British India'.

*Appraisal of the Cabinet Mission Plan.* The Cabinet Mission Plan was an earnest and fair attempt to reconcile the differences between the Congress and the Muslim League and as such was a most carefully worked out compromise formula, calculated to satisfy the rival claims of the two parties. By providing for a Union of India with three essential subjects (Foreign Affairs, Defence and Communications) and by rejecting the Pakistan scheme, the Plan was able to accommodate the Congress point of view. At the same time, it conceded to the Muslims all the advantages of Pakistan without incurring the danger of partitioning the country. It gave them the right to form autonomous groups in the Punjab, N. W. F. P., Sind and British Baluchistan, on the one hand and Assam and Bengal, on the other. It also provided that a question raising a major communal issue in the Constituent Assembly would be decided by a majority of the representatives of each community and by the members of the Constituent Assembly as a whole. Thus, the League found in the proposals some substance of Pakistan.

The other merits of the Plan :—

(1) The old method of giving weightage to minorities was given up. Communal representation was granted only to Muslims and Sikhs, and not to Anglo-Indians, Indian Christians and other interests. The Constituent Assembly was to be elected on the democratic principle of population strength and the principle of proportional representation.

(2) The entire membership of the 'Assembly' was made Indian. The European members of the Provincial Assemblies voluntarily agreed not to contest or participate in the elections.



(3) The Plan provided for democratic method of deciding issues, *i.e.*, all decisions were to be made by a simple majority vote.

(4) The Constituent Assembly, subject to certain limitations, was made a sovereign body.

(5) The proposals provided for the Union of British India and native States. They also laid down that the question of representation for the States would be decided by the Negotiating Committee of the Rulers and British Indian representatives.

(6) The Plan was presented as an integral whole and no party could accept a part of it and reject the rest.

Lord Wavell, in a broadcast from Delhi on May 17 pointed out the merits of the scheme thus: "The proposals put before you are obviously not those that anyone of the parties would have chosen if left to itself. But I do believe that they offer a *reasonable* and *workable basis* on which to found India's future Constitution. They preserve the essential unity of India which is threatened by the dispute between the two major communities; and in special they remove the danger of the disruption of that great fellowship, the Indian Army, on whose strength, unity and efficiency her future security will depend. They offer to the Muslim community the right to direct their own essential interests, their religion, their education, their culture, their economic and other concerns.....To another great community, the Sikhs, they preserve the unity of their homeland, the Punjab.....They provide in the special committee, which forms a feature of constitution-making machinery, the best chance to the smaller minorities to make their needs known and secure protection for their interests.....They offer to India the prospects of peace, a peace from party strife....."

*Defects of the Plan.* (1) The Plan greatly restricted the powers of the Centre by allocating to it only the powers of Defence, External Affairs and Communications. The Centre had no control over such subjects as currency and coinage, customs and tariffs, weights and measures, patents and copyrights, planning and development, Federal Court and Inter-State Commerce—subjects which are assigned in all Feder-



ations to the Central Government and which alone make possible the integrated economic development of a country.

(2) Another weakness of the plan was that it was very complicated and was too fine a balancing of contending interests and principles. Its success depended upon the acceptance of its principles by all parties and interests. This provided a handle to the Muslim League to stay out.

(3) The formation of groups or sub-federations was open to grave objections. The compulsory nature of grouping of Provinces was inconsistent with the principle of provincial autonomy.

(4) The entry of the States into the Constituent Assembly was left to the whim of their Rulers. The States were also not required to establish a democratic form of government in their territories.

(5) There was no provision in the proposals for a revision in the existing artificial boundaries of the provinces on a linguistic or cultural basis.

(6) The Sikhs, who constituted the third important community in the State, were accorded a step-motherly treatment. No provision was made for safeguarding their interests either in Section B or in the other groups.

#### *Reaction of the Various Political Parties to the Cabinet Mission Plan.*

The various political parties held divergent views on the Plan. These may be summarised below :—

*The Congress.* Before accepting the Plan, the Congress Party sought clarification on certain points which failed to meet the Congress view-point. One of the points referred to the grouping of Provinces, another related to the sovereign character of the Constituent Assembly, and a third was about the character of the proposed Interim Government. The Cabinet Mission issued a statement on May 25, 1946 in which it accepted the complete freedom of the Constituent Assembly to frame the Constitution but asserted that grouping of the Provinces was compulsory, although the Provinces had the right to opt out later.



Regarding Interim Government, Lord Wavell in his reply to the Congress President on May 30, 1946, said that, although the Interim Government would not have the same powers as the Dominion Cabinet, yet the British Government would give the fullest measure of co-operation to such Government. In spite of many defects revealed in the British Government's interpretation, the Congress accepted the Plan as it hoped to build up a united democratic India through the Constituent Assembly.

*The League.* The Muslim League accepted the Plan as it offered possibility of formation of Pakistan by introducing compulsory grouping of six Provinces. It considered the Plan as an instrument for the establishment of Pakistan.

*The Sikhs.* The Sikhs expressed their strong disapproval of the proposals, as compulsory grouping in the Punjab affected their interests prejudicially.

*The Interim Government.* The setting up of the Interim Government was described as the short-term plan as distinguished from the setting up of the Constituent Assembly, which was known as the long-term plan. Negotiations for the establishment of the Interim Government were started by the Viceroy. The Congress wanted the Interim Government to function as a Dominion Cabinet. The Congress rejected the proposal of the Viceroy granting five seats to the Congress, five to the Muslim League and two to the other communities. The Muslim League claimed the sole right of nominating all Muslim members to the Council and contested the right of the Congress to nominate Nationalist Muslims to the Council. It also claimed the right of being consulted in the choice of other minority representatives.

#### June 16 Statement

As the talks on the formation of the Interim Government did not bear fruit, the Viceroy issued a fresh statement on June 16, 1946 inviting six representatives of the Congress, five of the Muslim League, three representatives of minorities, one Sikh, one Christian and one Parsi to join the Interim Government. The parties were asked to communicate their acceptance of the proposals before June 26. The Viceroy laid down the condition that on the failure of one of the



parties to join the Government, a Government would be formed of representatives of those parties which had accepted the statement of May 16.

The Congress accepted the long-range scheme of May 16 but rejected the short-range plan of June 16 as the Mission did not accede to the Congress President's demand for inclusion of a Muslim of their choice in the representatives of the Congress in the interim Government. The Muslim League accepted the Viceroy's proposal for an Interim Government, after it had been rejected by the Congress and insisted that the Interim Government be formed in the absence of the Congress. The Viceroy did not agree to this proposal and deferred the question of the formation of the Interim Government for some time and set up a Caretaker Government instead.

This enraged Mr. Jinnah and he charged the Mission and the Viceroy with breach of faith. The Viceroy, however, maintained that in the light of the June 16 statement, he was clearly bound to make an attempt to form a Government representative of both the major parties, since both had accepted the statement of May 16. The Muslim League on July 29 withdrew its acceptance of the Cabinet Mission proposals. It made a demand for two separate Constituent Assemblies for Hindustan and Pakistan. It called upon all Muslims to renounce their titles and authorised the Working Committee of the Muslim League to draw up a programme of Direct Action to establish Pakistan.

*Formation of Interim Government by Congress.* As the Muslim League had rejected both the short-term and long-range Plans under the Cabinet Mission scheme, the Viceroy invited the Congress President on August 6 to assist him in the formation of the Interim Government. Pandit Nehru, before accepting this invitation, flew to Bombay and requested Mr. Jinnah to co-operate with him in the formation of the Interim Government, but the latter declined the offer. An Interim Government of 12 members with Pandit Jawaharlal Nehru as Vice-President of Executive Council was thereupon formed and it took office on September 2, 1946. It included the following other members, Sardar Vallabhbhai Patel, Dr. Rajendra Prasad, Mr. Asaf Ali, Mr. C. Rajgopalachari,



Mr. Sarat Chandra Bose, Dr. John Mathai, Sardar Baldev Singh., Sir Shafat Ahmad Khan, Mr. Jagjivan Ram, Syed Ali Zaheer, and Mr. C. H. Bhabha.

*Direct Action of the League.* The Muslim League fixed August 16 as the 'Direct Action' day. To celebrate it, the Bengal Government declared the day as a public holiday. This direct action was launched not against the British but against the Hindus. There was an orgy of violence in Calcutta and Sylhet. The rough estimate of those killed was about 7000, besides many more wounded. There were heavy casualties in Dacca also. There was a vehement demand for the recall of the Governor of Bengal who had failed in his duty of restoring law and order and preventing wholesale massacre. The fire of violence spread to Noakhali and Tipperah in East Bengal, too. The intensity of the wave of violence which swept over these places roused a sense of horror all round. 'Abductions and rape, murders and forced conversions, arson and loot became the order of the day.' Hindus left East Bengal in large numbers and came to Bihar. The story of their suffering aroused the passions of the people of Bihar who also retaliated. The story was repeated in Meerut and Garhmukteshwar. All these riots were the direct outcome of the policy of the Muslim League. The leaders of this organisation, however, never condemned these barbarous acts. The only silver lining to the dark cloud of communal frenzy was Mahatma Gandhi's efforts to put a stop to this senseless orgy of human butchery.

*League's Entry into the Interim Government.* The Muslim League was feeling uneasy at the formation of the Congress Government at the Centre. The Viceroy, Lord Wavell, was also anxious to bring the Muslim League into the Cabinet, as he did not want the Interim Government to function as a Dominion Cabinet. He wanted to encourage a conflict inside the Cabinet so that both parties could lean on him for arbitration. The Muslim League, on the persuasion of the Viceroy, waived its opposition to the appointment of a non-League Muslim on the recommendation of the Congress to the Cabinet. It agreed to enter the Executive Council, but did not withdraw its resolution rejecting the long-range plan of the Cabinet Mission. This



was contrary to the intention of the Plan, which was presented as an integral whole. No party could accept a part and reject the rest. The Viceroy offered the League five seats in the Cabinet without requiring it to participate in the deliberations of the Constituent Assembly. 'The Muslim League entered the Interim Government to get a foothold to fight for its cherished goal of Pakistan'. 'The new members who joined the Cabinet were : Mr. Liaquat Ali Khan, Mr. Ghazanfar Ali, Sardar Abdul Rab Nishtar, Mr. I. I. Chundrigar and Mr. J. N. Mandal, a member of the Scheduled Castes, who was nominated in order to create a schism in the ranks of the Hindus. Mr. Ali Zaheer, Sir Shafat Ahmad Khan and Mr. Sarat Chandra Bose resigned their membership to enable the League members to come in.

*Working of the Interim Government.* The Interim Government was functioning as a Cabinet but with the entry of the League on October 26, its functioning on the principle of collective responsibility became difficult. Pandit Nehru, after a none-too-happy experience of a few weeks, said, Lord Wavell was removing 'one by one the wheels of the Cabinet Coach' and that the Muslim League was functioning as the King's party. The latter had formed a separate bloc and acted in opposition to the majority. Mr. Jinnah did not regard the new set-up as either a Cabinet or a coalition government. According to him, the interim Government was simply an expanded Executive Council of the Governor-General formed under the Government of India Act of 1919. It had no coherence, no homogeneity and was government of men who were merely in juxtaposition very much like the indissoluble particles of a mechanical mixture as opposed to those in a crystalline compound. The establishment of this form of Interim Government with a British Viceroy as its head, having the right to veto any decision made by the Government, was inconsistent with the spirit of the change contemplated in the Cabinet Mission Plan.

*Elections to the Constituent Assembly.* The elections to the Constituent Assembly under the Cabinet Mission Plan were held in July. In these elections the Congress captured



205 seats in a House of 296. Ninety-three seats were to be filled in by the States later. Of the 79 Muslim seats 73 were secured by the Muslim League, three by the Congress, two by Independents and one by a Punjab Unionist. The Sikhs captured four seats only. The Congress and the League elected several distinguished men from public life.

The party position in the different sections emerged as follows :—

Section A	Congress	Independent General	Muslim League	Independent Muslims
U. P.	45	3	7	—
C. P.	16	—	1	—
Madras	45	—	4	—
Bombay	19	—	2	—
Bihar	28	3	5	—
Orissa	3	1		
Delhi	1			
Coorg	1			
Ajmer-Merwara	1			
Total	164	7	19	

Section B	Congress	Independent General	Muslim League	Independent Muslims	Sikhs
Provinces					
Punjab	7	—	18	1	4
N. W. F. P.	2		1	—	—
Baluchistan	—			1	
Total	9	—	19	2	4

Section C	Congress	Independent General	Muslim League	Independent Muslim
Bengal	25	2	32	1
Assam	7		3	
Total	32	2	35	1

*The Constituent Assembly at Work.* The Constituent Assembly met for the first time in New Delhi on December 9, 1945. The Muslim League did not join it. The boycott



of the Muslim League was explained as being due to its differences with the Congress regarding the interpretation of the Cabinet Mission Plan of May 16, particularly the grouping clauses. The League held the view that grouping of Provinces in Section B and C was compulsory and that the groups had the right to frame the Constitutions of their constituent Provinces. The Congress opposed this interpretation and held that formation of groups was voluntary and that Provinces had the right to frame their own Constitutions and to decide whether they would join a group or stay out at the initial stage of the Constituent Assembly.

*December 6 Statement.* In order to secure the participation of the two major parties in the Constituent Assembly, the British Government summoned Pandit Nehru, Mr. Jinnah, Mr. Liaquat Ali and Sardar Baldev Singh to London during the first week of December. The Conference proved abortive as it was found impossible to reconcile the Congress and the League points of views. The British Government issued a statement upholding the Muslim League's interpretation of the grouping clauses of the Plan, saying that, decisions of the sections should in the absence of an agreement to the contrary, be taken by a simple majority vote of the representatives in the sections. It further observed, 'Should the Constitution come to be framed by a Constituent Assembly in which a large section of the Indian population had not been represented, His Majesty's Government would not contemplate forcing such a Constitution upon any unwilling parts of the country'.

*Congress Reaction.* The Congress Working Committee protested that the British Government's statement was 'a variation and addition to the Cabinet Mission Plan'. The Congress made it clear that *their objection was not to provinces entering Sections but to compulsory Grouping* and the possibility of a dominating province framing a Constitution for another province entirely against the wishes of the latter. The Congress reiterated that the proposal in regard to Grouping affected prejudicially two provinces, Assam and the North-West Frontier Province, as well as the Sikhs in the Punjab. In making this statement, the British Government had gone back upon its former assurances given to Master Tara Singh,



not to add anything to or interpret the Constitution. The All-India Congress Committee, however, in a Resolution passed on January 6, 1947, stated that 'it is anxious that the Constituent Assembly should proceed with the work of framing a Constitution for a free India with the goodwill of all parties concerned and with a view to removing the difficulties that have arisen owing to varying interpretations, agree to advise action in accordance with the interpretation of the British Government in regard to the procedure to be followed in the Sections.

'It must be clearly understood, however, that this must not involve any compulsion of a Province and that the rights of the Sikhs in the Punjab should not be jeopardised'.

The above Resolution of the Congress was an appeal to the Muslim League for co-operation. It made it clear that the Congress was opposed to compulsory grouping and not to their free association in the groups. The Muslim League response to this gesture was cold. It characterised the All-India Congress Committee's resolution as 'no more than a dishonest trick, a piece of verbal jugglery intended to deceive the British Government, the Muslim League and public opinion.' It declared the summoning of the Constituent Assembly as 'abinitio invalid, void and illegal' and demanded that 'it should forthwith be dissolved'.

The Constituent Assembly met on December 9, 1946, and was attended by 207 members out of 286 elected from British India. The Muslim League members abstained from attending. The Assembly elected Dr. Rajendra Prasad as its permanent Chairman and discussed the 'Aims and Objectives Resolution' moved by Pandit Nehru. Other important matters were not discussed and deferred to a subsequent meeting to secure the co-operation of the Muslim League.

*Muslim League's Rejection of the Congress Offer.* The Muslim League again rejected the Congress request for securing its co-operation in the deliberations of the Constituent Assembly. The League members of the Interim Government refused to treat Pandit Nehru as head of the Government and created obstruction in the working of the



Government. Pandit Jawaharal Nehru, Vice-President of the Interim Government, wrote a letter to Lord Wavell, demanding of him that either he should persuade the Muslim League to join the Constituent Assembly or he should ask it to quit the Interim Government. Mr. Liaquat Ali Khan wrote to the Viceroy in reply that the Congress acceptance of the May 16 Statement was conditional and that the League had as much right to continue in the Government as the Congress.

**The Announcement of February 20, 1947**

On February 20, 1947, Mr. Attlee, the British Premier, made his famous *Quit India statement*. This was a new approach to solve the Indian deadlock. The British Government announced that it would quit India by the end of June 1948. It hoped that faced with the immediate responsibility of administration of the country, the main political parties would settle their differences and act in an accommodating spirit. The announcement said: 'His Majesty's Government wish to make it clear that it is their definite intention to take necessary steps to effect the transference of power to responsible Indian hands by a date not later than June 1948'.....The statement added: "His Majesty's Government are anxious to hand over their responsibilities to a Government which, resting on the sure foundations of the support of the people, is capable of maintaining peace and administering India with justice and efficiency. It is, therefore, essential that all parties should sink their differences in order that they may be ready to shoulder the great responsibilities which will come upon them next year".

The statement also added that if an agreed Constitution was not worked out by a 'fully representative Assembly' before the due date, 'His Majesty's Government will have to consider to whom the powers of the Central Government in British India should be handed over on the due date, whether as a whole to some form of Central Government for British India or in *some areas* to the existing *Provincial Governments*, or in such other way as may seem most reasonable in the best interests of the Indian people'.



In regard to the Indian States, the statement reiterated His Majesty's Government's intention not 'to hand over their powers and obligations under Paramountcy to any Government of British India'.

The statement also announced the appointment of Admiral the Viscount of Mountbatten as Viceroy of India to succeed Lord Wavell. This step was necessitated by the opening of a 'new and final phase in India'.

*Reaction.* The statement of February 20, 1947 was welcomed by the Congress because it imparted a sense of realism to the political situation in India. The statement was liked by the Muslim League as it conceded the demand for Pakistan and strengthened its hands. The Princes felt satisfied because the statement gave them an assurance that paramountcy would not be ended till the final transfer of power took place.

*June 3 Plan.* Lord Mountbatten took over as Viceroy on March 24, 1946. Immediately after his arrival, he made the declaration that the political settlement would take place within a few months. He held a series of conferences with the Indian leaders to explore new possibilities of a settlement. He was fully convinced that it was useless to secure acceptance of the Cabinet Mission Plan in the face of determined opposition from the Muslim League. He also came to the conclusion that the solution of the Indian problem lay only in the partition of the country, because the Muslims were not prepared to be ruled by a Government having a predominant Hindu majority. It also became clear to him that a scheme of Partition also involved division of the predominantly non-Muslim areas in the Punjab and Bengal, because these could not be left to the tender mercies of the Muslim majority areas. Lord Mountbatten flew to England on May 18 to hold final discussions with His Majesty's Government. He returned on June 2, and on June 3, 1947, he issued a statement which provided for the Partition of the country and for the partition of Bengal, Assam and the Punjab.

The Legislative Assemblies of Bengal and the Punjab (excluding European members) were to meet in two sec-



tions, one representing the Muslim majority districts and the other the Hindu majority districts. Each section was to decide by a simple majority whether the province was to be partitioned or not. If partition was decided upon, each part of the Assembly was to decide whether it would join the existing Constituent Assembly functioning at New Delhi or the separate Constituent Assembly for Pakistan.

The Legislative Assembly of Sind was to decide whether it would join the Constituent Assembly of India or of Pakistan. It decided to join the Constituent Assembly of Pakistan.

The Sylhet district of Assam province which was predominantly Muslim in population was to decide through a referendum whether the people of that district would like to remain in India or join Pakistan. Sylhet decided to join the new state of East Bengal.

A referendum was to be held in N. W. F. P. to enable the people of that province to decide whether they would join Pakistan or remain in the Indian Union. The N. W. F. P. decided to join Pakistan. Similarly, British Baluchistan opted in favour of Pakistan.

The boundaries of the two States of India and Pakistan were to be determined by a Boundary Commission appointed by the Governor-General.

India and Pakistan were to get the Dominion Status but they had full liberty to leave the Commonwealth, if they chose to do so.

The June 3 Plan with regard to the Indian States declared that paramountcy would lapse and the States would be free to accede to one of the two Dominions or proclaim their independence and establish independent relations with Britain.

*Acceptance of the Plan.* The Congress, the Muslim League and the Sikhs accepted the June 3 Plan. The partition of the country was implicit in the declaration of February 20, 1947. The Congress Working Committee invited the Muslim League for joint consultations on the question how to take over power from the British when



the latter quit India by June 1948. But the League did not respond. It was trying hard to wrest power from the Congress and non-League Ministries in the N. W. F. P., Punjab and Assam, in order to take over the administration of these areas at the time of British withdrawal from India.

The Sikhs grew apprehensive when Partition of the country appeared to be inevitable and demanded partition of the Punjab. So was the case with the Hindus of Bengal. The Congress could not leave the Sikhs and the Hindus to the tyranny of the Muslim majorities in these Provinces.

*Partition Inevitable.* Under the circumstances, the Partition of India was inevitable and unavoidable. It was the logical result of the policy of separatism pursued by the Britishers for over a century after the great Revolt of 1857. The Congress had itself declared that it could not think in terms of compelling the people in any territorial unit to remain in the Indian Union against their declared and established will and that 'there should be no compulsion in the making of a Constitution for India and that the Constitution framed by the Constituent Assembly would apply only to those who accept it'. The Congress accepted Partition because it wanted to avoid a fratricidal civil war. Sardar Patel explained the position thus in a special Convocation of the Banaras Hindu University : "I felt that if we did not accept Partition, India would be split into many bits and would be completely ruined. My experience of office for one year convinced me that the way we have been proceeding would lead to disaster. We would not have one Pakistan but several. We would have Pakistan cells in every office."

It became clear to all sections of the people in India that it was impossible to hold on to the ideal of a united India due to the stubbornness of the Muslim League and Muslim separatism. Partition was the only way out of the communal veto, weightages, reservations and separate electorates.

### **Result of Partition**

There is no doubt that the Partition of India was an

\*Resolution of Congress Working Committee March, 6-8, 1947.



evil. It led to disastrous results. But it was inevitable. The division of country was not based on linguistic, cultural or national considerations. It was based on expediency. The result was that frontiers were arbitrary and disputable. Partition was no solution to the problem of minorities either. It was followed by the most hideous communal riots accompanied by outbursts of unexampled violence, mass murders, and crimes against women and children, and exodus of millions of refugees, unparalleled in the history of the world. It adversely affected the economy of India and Pakistan. Pakistan produced about one-third of the total amount of rice and wheat produced in India before Partition. This resulted in acute shortage of food in India. India was also deprived of a major portion of her requirements of raw jute and cotton which went away to Pakistan. In similar manner Pakistan was affected adversely in the matter of industries.

Thus the Partition of the country shattered the ideal of the unity of India which was the cherished ideal of poets, philosophers and statesmen and for which Ashoka, Chandragupta and Akbar had laboured for centuries, and on which the Indian National Congress, under the leadership of Mahatma Gandhi, had set its heart.

*Indian Independence Act.* The formal transfer of power into Indian hands was secured through the passage of the Indian Independence Act in July 1947. This Act provided for the end of British rule in India on August 15, 1947, and the establishment of the Dominions of India and Pakistan with full liberty to secede from the British Commonwealth. It did not, as Mr. Attlee explained, 'lay down a new Constitution for India providing for every detail'. 'It was far more', he said, 'in the nature of an enabling bill, a bill to enable the representatives of India and Pakistan to draft their own Constitutions'.

*Governor-General.* The Act abolished the office of the Secretary of State for India and his advisers. It provided for the appointment of the Governor-General in each of the two Dominions. He was to be appointed on the advice of the Cabinet of the Dominion, and not on that of the British



Cabinet. The Governor-General ceased to be called the Viceroy and both the Governor-General and the Governors of the various provinces were divested of their special powers and responsibilities and power to act on their individual judgment or discretion. They were reduced to the position of constitutional heads.

*Legislatures.* The Act provided that the Constituent Assemblies of the two Dominions were to serve as their respective legislatures. These legislatures were invested with full *legislative sovereignty* as in other Dominion Legislatures under the Statute of Westminster. No law made by the Indian legislature could be held void or inoperative, if it came into conflict with a law of the British Parliament. No Act of the British Parliament could extend to any Dominion unless it was adopted by the legislature of the respective country as part of its laws\*. The Dominion legislature was empowered to repeal or amend any Act of the British Parliament.

*Indian States.* According to the Act, the suzerainty of the Crown over the Indian Native States, and also their connection with tribal areas came to an end with effect from August 15, 1947. The State thereafter became independent in their political relations with the Governments of the Dominions. The British Government did not intend to hand over their powers and obligations under Paramountcy to the Governments of Dominions.

Finally, it was provided that the relations of the British Government with the new Dominions were to be conducted through the Commonwealth Relations Office, as in the case of other Dominions.

*Significance of the Act.* Mr. Attlee described the Indian Independence Act as 'no abdication but the fulfilment of the British mission'. Lord Samuel considered it 'as an event unique in history—a treaty of peace without a war'. The passing of the Act was regarded as the opening of a new chapter in Indo-British relationship. In the words of Dr. Rajendra Prasad, "The period of domination of British over India ends today, and our own relationship

---

\*Sub-section 4 of section 6 of the Indian Independence Act.



with Britain is henceforth going to rest on a basis of equality, of mutual goodwill and mutual profit."

### Select Bibliography

*Reginald Coupland* : The Indian Constitutional Problem, a Restatement.

*Dr. Rajendra Prasad* : India Divided.

*Dr. B. R. Ambedkar* : Thoughts on Pakistan.

*Dr. Pattabhi Sitaramayya* : History of Indian National Congress, Volume II.

*A. C. Bannerji* : The Making of the Indian Constitution.

*Ashoka Mehta & Achyut Patwardhan* : The Communal Triangle.

*Naresb Chandra Roy* : Towards Framing the Constitution of India, Chapter VII.

*D. N. Sen* : Revolution by Consent, Chapter 12, Indian Annual Register, 1946-47.







**VOLUME II**  
**THE PRESENT CONSTITUTION OF INDIA**







## CHAPTER 14

### THE CONSTITUENT ASSEMBLY AND ITS WORK

The Indian Constituent Assembly, which was elected according to the procedure laid down by the British Cabinet Mission in its statement of May 16, 1946, met for the first time on December 9, 1946. It was a historic meeting and for the first time the people's representatives were meeting to determine the future constitutional set-up of the country.

#### Meaning of Constituent Assembly

In ordinary parlance, a Constituent Assembly means an assembly which draws up the constitution of a country. But in real sense, it has a much wider connotation. It does not merely mean a body of people, or a gathering of lawyers, who are intent on drawing up a constitution. It means in the words of Shri Jawaharlal Nehru, "a nation on the move, throwing away the shells of its past, fashioning for itself a new garment of its own making. It means the masses of a country in action through their elected representatives. It has therefore a definite revolutionary significance."\*

#### History of the Constituent Assembly

The idea that a National Assembly representing the sovereign will of the people should frame the constitution of a country may be traced back to the 18th century. It was first tried in the former American colonies of Great Britain and then taken up by the French people. In America the minds of the people were saturated with the idea of John Locke that the foundation of all government was the consent of the governed, and that a government could be removed if it exceeded the authority delegated to it by the people. This view was the main feature of the noble document, the Declaration of Independence, drafted by Jefferson in 1775.

France has been described as the laboratory of constitutional experiments. Her great contribution to politics is her theory and practice of the Constituent Assembly. In

---

\**Constituent Assembly* by Y. G. Krishnamurti. Foreword by Jawaharlal Nehru, p. (V).



1789, King Louis XVI retained all powers of administration, legislation and judiciary in his hands. Due to misgovernment, there was a financial breakdown in the country which forced the king to convene the States-General which had not met for over 175 years. The States-General declared itself as the National Assembly and proceeded to frame the new Constitution of France with a declaration of the Rights of Man. It established the principle of popular sovereignty, of separation of power and of equality of opportunity for all. Unfortunately, the turn of events submerged the work of the National Assembly and diverted France to other channels of thought and activity.

*Revolution of 1848.* The precedent created in France of constitution-making by a National Assembly was followed in the same country in 1848 when the monarchy was overthrown by the Revolution. Louis Phillip, the monarch, and members of his family were bundled out of France, and a Provisional Government was set up which carried on the administration of the country. A Constituent Assembly of 900 members elected by manhood suffrage was constituted. It met on April, 27, 1848, and adopted a Constitution which came into effect at once without being referred to the people. Such a Constitution was, however, short-lived. Louis Napoleon, who was elected President by universal manhood suffrage, brought about a *coup d'etat* in January 1852 and became an emperor. The Constitutions of 1791 and 1848 proved to be paper constitutions, but the one drawn up in 1875 worked for about 70 years.\* After the Second World War, this Constitution was again scrapped and a new one was framed. General De Gaulle issued an ordinance on August, 17, 1945, outlining the electoral law under which the Constituent Assembly was elected on October 21 and met on November 6, 1945. It drafted a Constitution, providing for a single-chamber Legislative Assembly and an elected President with no power to dissolve the legislature. This Constitution was rejected by the electors of France. A

---

\*The 1875 Constitution established a parliamentary form of Government with the President as the nominal head and a Cabinet responsible to Parliament consisting of two Houses, the Chamber of Deputies and the Senate.



fresh Constituent Assembly was elected consisting of 586 members which framed a Constitution that was ratified by the French people and came into effect on October 13, 1946. This Constitution is still in operation in France.

### **Constitution-making in Germany**

After the Revolution of 1848, the revolutionary leaders devised the idea of a Constituent Assembly and National Assembly. The Constituent Assembly drew up one of the finest Constitutions. Unfortunately, the democratic forces in Germany were suppressed and the Constitution became a dead letter. Another attempt at constitution-making was made 70 years later. After the abdication of the Kaiser in 1919, Right Wing Socialists were keen on adopting a democratic constitution. Accordingly, a Constituent Assembly of 421 members was elected and it met at Weimar. The famous Weimar Constitution had democratic features and provided an impressive list of fundamental rights for German citizens. But this Constitution could not work due to the establishment of Nazi dictatorship in 1933.

### **Constitution-making in Canada and Australia**

The methods of framing constitutions in Canada, Australia and in the Irish Free State followed a different line of development from those considered above. Though the constitutions were framed by the representatives of the people in these States, they were formally regarded as the gift of the British Parliament, which had so far exercised sovereign powers in those States.

*Canada.* The Dominion of Canada was formed out of a number of separate colonies differing from one another in origin and character. Certain common factors, however, such as the racial hostility of the French and the English parties in the Government, fear of a powerful neighbour like the U. S. A., helped in the formation of a Federal Government in Canada. Under the presidentship of Sir E. P. Tache, the Prime Minister of Canada, a conference was convened at Quebec to consider the proposal of establishing a Federal Union. Technically speaking, such a Conference was not the Constituent Assembly, as is under-



stood in common parlance. It was an assembly of elected Canadian representatives and it lacked sovereign powers to enforce its decisions. Its proposals were first placed before the provincial legislatures for approval and then submitted to the British Government. Accordingly, delegates from all Provinces met in London and considered the scheme of the Federal Union formulated at Quebec and approved by the provincial legislatures of Canada. The British Parliament passed a bill embodying these proposals and the Dominion of Canada came into existence in July 1867.

*Australia.* The procedure of constitution-making followed in Australia was different from the one followed in Canada. The Canadians had great distrust among themselves and they greatly depended on the British for providing them with a Federal Constitution fulfilling their demands. The Australians, however, settled among themselves what they needed and their representatives met in London with the proposals which were ratified by the British Parliament. Earlier efforts to frame a Constitution for Australians did not succeed. A convention of leaders representing all the seven colonies met and it resolved to call a Convention of 45 delegates. This Convention met at Sydney in 1891. The colonial legislatures refused to accept the proposals formulated by the convention and so fresh elections were held and a new convention comprising 10 members each from each colony was held to draft the Constitution. This draft met the approval of five Australian Colonies and so the British Parliament accepted it in 1900. The Commonwealth of Australia Act thus came into force in 1901.

#### **Efforts at Constitution-making in India**

As mentioned earlier, before Independence, the Indian Constitution was framed by the British Parliament and Indians were not associated with its formulation, except in an advisory capacity. It was in February and March 1928 that an All-Party Conference under the chairmanship of Pandit Motilal Nehru drafted the principles of the Constitution of India on the basis of Dominion self-government. The British Government did not accept this proposal, and consequently in its Lahore session (1929) presided over by Pandit Jawaharlal Nehru, the Congress declared complete



independence as its goal. The Round Table Conferences, which were convened in London in 1930, 1931 and 1932, were merely of a consultative character.

*Demand for Constituent Assembly.* The Indian National Congress in 1934 passed a resolution, claiming for India the right of self-determination. It adopted a resolution in which it said the Constitution of India should be framed by a Constituent Assembly 'representative of all sections of the Indian people.'

The Indian National Congress in its Lucknow session in 1936 rejected the Government of India Act and declared that 'a democratic State in India could only come into existence through a Constituent Assembly having the power to determine finally the Constitution of the country.'

The outbreak of the Second World War in 1939 threw both the issue of Indian freedom and the idea of the Constituent Assembly into the background. The Working Committee of the Congress, however, reiterated its demand for a Constituent Assembly to frame the Constitution of India.

*Opposition by the Muslim League.* Mr. Jinnah and the Muslim League opposed the Congress scheme of the Constituent Assembly. On December 14, 1939, Mr. Jinnah expressed his misgivings that the so-called Constituent Assembly would be 'a second and larger edition of the Congress', 'a packed body manoeuvred and managed by the Congress caucus' \* in which the rights of the minorities could not remain safe. The Muslim League in 1940, however, demanded the formation of a separate Constituent Assembly to draw up the Constitution of Pakistan areas.

### **Cripps Proposals and the Constituent Assembly Demand**

In the beginning, the British Government did not reconcile itself to the idea of the extension of the principle of self-determination to Indians. But towards the end of 1942, when the international situation showed signs of worsening, it conceded the demand for the Constituent Assembly. This was done to enlist the active co-operation of Indians in the war effort against the Axis Powers. The

\*Indian Constitutional Documents, Vol. III, p. 404.



Cripps proposals (1942) envisaged the formation of a Constituent Assembly for framing the future Constitution of the Indian Union after the cessation of war.

### Cabinet Mission Plan

After the failure of the Cripps proposals, the next step towards the formation of the Constituent Assembly was taken up by the Cabinet Mission. As has been explained earlier, the Cabinet Mission's Plan for the Constituent Assembly represented a compromise between the extreme views held by the Congress and the Muslim League.

The Constituent Assembly as designed by the Cabinet Mission was not a *sovereign body but was born with restrictions*. It could not frame any Constitution it desired and thereafter enforce it. The framework of the future Union Constitution was already settled, *i. e.*, the Centre was allotted Defence, Foreign Affairs and Communications. The Constituent Assembly was not competent to allot more powers to the Central Government. It could not decide any question by a majority vote if a major constitutional issue was involved. The latter could be settled by a majority of all the members of the Constituent Assembly meeting together and by a majority of each of the two principal communities voting separately. Similarly, the Sections had their own constitutions with almost autonomous powers. The procedure to be followed by the Constituent Assembly as also laid down by the Plan could not be altered. Again the Constitution framed by the Constituent Assembly could not come into force unless the British were satisfied that adequate provision was made for the protection of the minorities and unless the Constituent Assembly agreed to the terms of treaty considered satisfactory from the British point of view.

*June 3, 1947 Plan.* On June 3, 1947, His Majesty's Government issued a statement that it was not the intention of His Majesty's Government to interrupt the work of the existing Constituent Assembly. At the same time, it declared 'it is clear that any Constitution framed by this Assembly cannot apply to those parts of the country which are unwilling to accept it'. Accordingly, a separate Consti-



Constituent Assembly for Pakistan was set up and the Constitution Assemblies of both the Dominions assumed sovereign constitution-making authority. With the formal passing of the Indian Independence Act by the British Parliament on July 14, 1947, it became possible for the Indian Constituent Assembly to frame a Constitution of its own, unfettered by any restrictions imposed by the British Parliament.

*The Constituent Assembly of India and its Work.* The preliminary session of the Constituent Assembly was held on December 9, 1946. Due to non-co-operation in the work of the Assembly by the Muslim League which carried on vigorous propaganda for the establishment of Pakistan, it could not make much headway. It discussed Pandit Nehru's Resolution on Aims and Objectives of the Constituent Assembly and passed it on January 22, 1947. The Resolution expressed the firm and solemn resolve of the Constituent Assembly 'to proclaim India as an Independent Sovereign Republic and to draw up for her future governance, a Constitution : wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of government, will be derived from the people; and wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and wherein adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and backward classes; and this ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and welfare of mankind'.

The Resolution gave expression to the ideals and aspirations for which the Indian people had struggled and took a pledge to establish social, economic and political justice for all citizens. It assured adequate safeguards for minorities. It emphasised that India would strive for the promotion of world peace and for the welfare of mankind.

*Making of the Indian Constitution.* The Constituent



Assembly set itself to the task of framing the Constitution and appointed several sub-committees, *e. g.*, the Union Constitution Committee, the States Constitution Committee, the Advisory Committee on Minorities and Fundamental Rights, etc., etc. The reports of these Committees later provided the brick and mortar for the final Constitution.

On August 29, 1947, the Constituent Assembly set up a Drafting Committee of seven members with Dr. Ambedkar as Chairman and the late Alladi Krishnaswami Iyer, the Late N. Gopalswami Iyengar, Mr. M. K. Munshi and Mr. T. T. Krishnamachari as members. The Draft Constitution was published in February, 1948. It was discussed for eight months and as a result many changes in the original draft were made.

One important departure of the Draft from the Objectives Resolution was that whereas the latter had provided for residuary powers to vest in the Units, the Union enjoying only enumerated powers, the Draft proposed that the Union Government should exercise residuary powers of legislation. Another significant change made was that the autonomous status of the States was greatly weakened and the Centre was strengthened. This was necessitated by the change of the political situation resulting from the partition of the country. After elaborate discussions, the draft was finalised with suitable amendments on November 26, 1949. The Constituent Assembly took about two years, eleven months and eight days to frame the Constitution of Free India.

The Constitution of India is a comprehensive document containing 395 articles and eight schedules. The framers of the Constitution largely drew upon the well-known constitutions of the world and the Government of India Act of 1935. The provisions of Fundamental Rights in India owe their inspiration to the Constitution of the U. S. A. and the Directive Principles of State Policy are borrowed from Eire.

The Constitution represented the people's cherished desire to fulfil their own destiny. As an instrument representing democratic ideals and the pursuit of peace and happiness, it was hailed in all countries of the world as a glorious chapter in history towards man's march to progress.



**Select Bibliography**

*N. C. Roy* : Towards Framing the Constitution of India :  
Chapter 3

*Dhirendra Nath Sen* : Revolution by Consent : Chapter IV. p.  
66-111.

*Y. G. Krishnamurti* : Constituent Assembly.

*A. C. Banerji* : Constitutional Documents, Vol. III.

*G. M. Singh* : Constitution Making.



## CHAPTER 15

### AMENDMENTS TO THE CONSTITUTION

The framers of India's Constitution took every possible care to make it a perfect document. They were, however, fully conscious of the fact that like all human efforts, it would have its quota of failings and faults. It was not, therefore, made an inviolable document, impervious to any change. On the contrary, it was devised as a flexible and elastic Constitution, which could be changed in accordance with the exigencies of the situation and the needs of the times. Care was, however, taken to guard against any unwarranted and unwanted changes. It was made neither too elastic like the British Constitution, nor too rigid like the American Constitution. A middle course was followed.

#### **Procedure for the Amendment of the Constitution**

For purposes of amendment, the provisions of the Indian Constitution can be divided into three groups.

In the first group are included certain articles of the Constitution which can be amended by the ordinary process of legislation. For instance, article 169 provides for the abolition or the creation of a Legislative Council for a State by ordinary law. Similarly, article 11 empowers Parliament to make any provision relating to Indian citizenship.

In the second group are included certain articles of the Constitution which affect the distribution of powers between the Centre and the State, the President and the Union Judiciary. In respect of these articles, a rigid procedure has been laid down for effecting amendments. It has, for instance, been said in article 368 of the Constitution that no amendment which affects :

- (1) election of the President;
- (2) extent of the executive power of the Union and the States;
- (3) Union and the State Judiciary;
- (4) legislative relations between the Union and the States;



(5) Union, State and Concurrent Legislative Lists and (6) representation of States in Parliament shall be passed unless the same is approved in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of that House present and voting. This rigidity has been introduced expressly to safeguard the federal character of the Constitution.

In respect of the remaining articles of the Constitution which can be said to fall in the third category, it has been said that they can be amended if a bill to that effect is passed in each House by the majority of the total membership of that House and a two-thirds majority of that House present and voting.

#### SOME RECENT AMENDMENTS

The working of the Constitution disclosed that some of the fundamental rights guaranteed in the Constitution either gave too much liberty to citizens so as to permit their misuse or came in the way of the implementation of the Directive Principles of State Policy. It was, for example, discovered that the right to property militated against the Directive Principles enjoining upon the Government to provide that the operation of the economic system does not result in the concentration of wealth and means of production to common detriment.

The amendments which have, therefore, been made in the Constitution in recent years have tried to remedy these defects. They have no doubt imposed more restrictions on the freedom of the individual but it has been done in the larger interests of the community. Following is a brief account of the amendments made so far.

#### The First Amendment

The validity of the zamindari abolition laws, which appeared in the Government's programme of social legislation, was disputed in several States. The Constitution (First Amendment) Act, 1951, was, therefore, passed to place these laws above challenge in the courts. It added two more articles and a Schedule to the Constitution. It also amended Article 15 of the Constitution so as to safeguard



the educational and economic interests of the weaker sections of the community like the Scheduled Castes and the Scheduled Tribes by providing that any special measures which might be taken to promote the interests of these classes may not be challenged on the ground of being discriminatory.\* It further extended the scope of restrictions which might be imposed by law on the exercise of the right of freedom of speech and expression so as to enable *reasonable* restrictions to be imposed on this right in the interests of friendly relations with foreign States or public order or on the ground of incitement to offence.† It, however, subjected every such restriction to judicial review on grounds of reasonableness.

### The Second Amendment

The Constitution (Second Amendment) Act, 1952, brought Article 81 (1) (b) relating to representation in the House of the People into line with Article 170 (2) relating to representation in the State Assemblies. Article 81 (1) (b), as it originally stood, provided that the States were to be divided, grouped or formed into territorial constituencies and the number of members to be allotted to each such constituency was to be so determined as to ensure that there would be not less than one member for every 750,000 of the population and not more than one member for every 500,000 of the population. The amended article removes the upper limit of representation. This amendment was necessitated in order to remove the difficulties which arose in effecting readjustment of representation of territorial constituencies in the House of the People as a result of the 1951 census in view of the overall limit of 500 members prescribed in Article 81 (1) (b).

### The Third Amendment

Under Article 369, Parliament had power to legislate in respect of certain essential commodities up to January

\*This amendment was sequel to the decision of the Supreme Court that the communal G. O. of Madras Government contravened the provisions of Art 15 (1) (1952 S. C. 226) clause 15 (4) was added to advance the interest of backward classes.

†The amendment was necessitated due to decision of Supreme Court in (1) Ramesh Thapper v. State of Madras 1950 S. C. 124 and (2) Brij Bhushan v. State of Delhi 1950 S. C. 129.



25, 1955. As the Centre's continued control over some of these commodities was considered desirable, the Constitution (Third Amendment) Act, 1954, amplified the scope of entry 33 of List III in the Seventh Schedule by the inclusion in it of four classes of these commodities, *viz.* foodstuffs, cattle fodder, raw cotton and raw jute. It further amplified the scope of that entry by the inclusion of imported goods of the same kind as the products of centralised industries in order that the Centre might be in a position to exercise full control over the development of such industries.

#### **The Fourth Amendment**

The fourth amendment dealt with zamindari abolition laws which came first in the Government's programme of social welfare legislation. Subsequent judicial decisions interpreting Articles 14, 19 and 31 raised further difficulties in the way of the Union and the States putting through other and equally important social welfare legislation on the desired lines. It became, therefore, necessary to restate more precisely the State's power of compulsory acquisition and requisitioning of private property and distinguish it from cases where the operation of regulatory or prohibitory laws of the State resulted in deprivation of property and also to save other social welfare legislations which affect proprietary rights from the purview of Articles 14, 19 and 31. The Constitution (Fourth Amendment) Act, 1955, accordingly further amended articles 31 and 31A so as to make provision for—

- (a) Making the Legislature the final arbiter as to the quantum of compensation to be paid, without leaving it open to the courts to go into the question whether the compensation provided under the law was adequate or not;
- (b) making it clear that the deprivation of property unaccompanied by any transfer of the ownership or right to possession of such property would not amount to compulsory acquisition or requisitioning of property;
- (c) saving laws providing for any of the following matters from challenge in the courts on the



ground of contravention of Articles 14, 19 and 31 of the Constitution, namely :

- (i) the taking over the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property;
- (ii) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations;
- (iii) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, or managers of corporations, or of any voting rights of shareholders thereof;
- (iv) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or working, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence.

As a corollary to the amendment of Article 31A, the Ninth Schedule was also amended by the inclusion in it of seven more laws.\* Opportunity was also taken to amend Article 305 so as to put beyond doubt the authority of Parliament or of a State Legislature to make law introducing State monopoly in any particular sphere of trade or commerce.†

#### The Fifth Amendment

The Constitution provided that any Bill for the purpose of forming a new State or altering the area, boundaries or name of any State, could not be introduced in Parliament

\* These amendments were necessitated due to the decisions of the Supreme Court in a number of cases *i.e.* *Dwarkadas v. Sholapur Mills Ltd.* (1954 S. C. 92); *State of West Bengal v Subodh Gopal* (1954 S. C. 92); *West Bengal Settlement society v. Bela Bennerji* (1954 S. C. 170)

† This was made to meet decision on *Saghir Ahmed v. State of U. P.* 1954 S. C. 728)



unless the views of the State Legislatures concerned were ascertained by the President. The Constitution (Fifth Amendment) Act, 1955, authorises the President to prescribe a time-limit for the States to communicate their views in the matter.

### **Sixth Amendment**

As it was considered necessary that the Centre should also take over powers in respect of taxes on the sale and purchase of certain goods other than newspapers in the course of inter-State trade or commerce, the Constitution was further amended in 1956. The Sixth Amendment added entry 92-A to the Union List and made consequential amendments to entry 54 in the State List and Articles 269 and 286.

### **Seventh Amendment**

The Constitution (Seventh Amendment) Act, 1956, was enacted to implement the scheme of States reorganisation as envisaged by the States Reorganisation Act, 1956, and the Bihar and West Bengal (Transfer of Territories) Act, 1956.

The scheme involved not only the establishment of new States and alterations in the areas and boundaries of the existing States but also the abolition of the three categories of States (Part A, Part B and Part C). The Seventh Amendment, has, therefore, amended Article 1 and revised completely the First Schedule which now includes 14 States and 6 Union territories.

The territorial changes and the formation of new States and Union territories needed a complete revision of the Fourth Schedule which provides for the allotment of seats to the various States in the Rajya Sabha. According to the revised Schedule 213 seats are allotted to the 14 States and Seven to the Union territories.

The reorganisation scheme also necessitated a revision in the strength of the House of the people. The revised sections provide that the House shall consist of not more than 520 members, 500 to be chosen by direct elections



from the territorial constituencies in the States and 20 representing the Union territories to be chosen in such manner as Parliament may by law provide. The previous upper and lower limits have been abolished and it is now provided that each State shall be allotted seats for the House of the People in such manner that the ratio between the number of seats and the population is, so far as practicable, the same for all the States.

The revision of the proviso to Article 131 was consequential on the disappearance of the part 'B' States. Since it may now be considered desirable under certain circumstances to appoint a Governor for two or more States, a proviso has been added to Article 153 which removes a technical bar to such an appointment.

As the Reorganisation Scheme envisages bicameral legislatures for the new States of the Punjab and Mysore, Article 168 is amended to provide for the same.

The seventh Amendment substitutes a new Article, Article 170, which lays down that the Legislative Assembly of each State shall consist of not more than 500 and not less than 60 members chosen by direct elections from territorial constituencies in the State. The remaining provisos are more or less the same as those included for the House of the People.

The former Article 171 fixed the maximum strength of a Legislative Council at one-fourth of the Legislative Assembly of the State. Although in larger States like Uttar Pradesh and Bihar, this maximum strength was adequate, in case of smaller States it was not sufficient. The new clause has thus increased the maximum strength of a Legislative Council to one-third of that of the Lower House.

According to the proviso of former Article 216, it was left to the President to fix the maximum number of judges for each High Court by separate orders. The appointment of additional and acting judges for which a provision is now made in Article 217 would have thus involved frequent modifications in the order. Consequently, the proviso has been dropped.

The Indian Constitution previously debarred a High



Court Judge from practising in any court after his retirement from the Bench. The Seventh Amendment modifies Article 220 so as to relax this ban and permit a retired judge to practise in the Supreme Court and in a High Court other than the one in which he was a permanent judge.

New Articles, Articles 230, 231 and 232, have been substituted with a view to providing for the extension of jurisdiction of High Courts to Union territories and the establishment of a common High Court for two or more States. These amendments were necessitated as a result of the reorganisation of States and the creation of Union territories.

The Seventh Amendment has also amended Part VIII of the Constitution. It is now provided that the Union territories shall be administered by the President, to such an extent as he thinks fit, through an Administrator to be appointed by him. It also empowers the President to appoint the Governor of a State as the Administrator of an adjoining Union territory. At the same time, the President is authorised to make regulation for the peace, progress and good government of the Andaman and Nicobar and the Laccadive, Minicoy and Amindivi Islands.

Formerly, the President was empowered by Article 258 (Clause I) to entrust Union functions to a State Government or its officers. This lacuna proved to be a hindrance to the execution of certain developmental projects in the State. By incorporating a new Article 258 (A), the Sixth Amendment has sought to obviate this difficulty.

The Seventh Amendment amplifies the scope of Article 298 by authorising the Union and the State Governments to carry on any commercial and industrial undertaking, trade or business and to acquire, hold and dispose of property, etc. The executive power of the Union and the States in this respect is, however, subject to legislations of the Union and the State concerned, respectively.

The new Articles 350 (A) and 350 (B) are designed to implement the recommendations of the States Reorganisation Commission with regard to safeguards for linguistic minorities. Accordingly, it is now enjoined upon every



State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minorities. To this end, the President can also issue directions to any State. Article 350 (B) envisages the appointment of a special officer who will investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution and report to the President thereon. The report shall be laid before each House of Parliament and also sent to the Government of the State concerned.

By amending Article 371, the Seventh Amendment has also provided for the constitution of regional committees of the Legislative Assemblies of the new Andhra Pradesh and Punjab States and the establishment of separate Development Boards for Vidharbha, Marathawada, the rest of Maharashtra, Saurashtra, Kutch and the rest of Gujarat. The revised Article also envisages equitable allocation of developmental expenditure in these areas and the provision of adequate facilities for technical, educational, vocational training and employment in services under the control of the State Governments in respect of these areas. Other provisions of the Seventh Amendment relate to the power of the President to adapt laws in force in the country before the commencement of this Amendment to accord with the provisions of the Constitution as amended, *e.g.* the Devaswom Fund, the duration of the Andhra Pradesh Legislative Assembly, the Second Schedule, the entries in the Lists relating to the acquisition and requisitioning of property, provisions relating to ancient and historical monuments and certain other consequential and minor amendments.



## CHAPTER 16

# INTEGRATION AND REORGANISATION OF INDIAN STATES

### Growth of Indian States

The story of the origin and growth of the Indian States is as fascinating as the story of the Arabian Nights. Most of the States in India were born at a time when the glorious edifice of the Mughal Empire was tottering through internal dissensions and foreign invasions, and the East India Company began to fish in troubled waters by aiding now this native prince and now that native prince. It built up its Empire by annexing the territories of the defeated rulers and by entering into treaties, sanads and agreements with more powerful neighbours.

### Relations with the East India Company

Sir William Warner\* has divided the history of the Indian States into three periods :—

- (i) From 1757 to 1813
- (ii) From 1813 to 1858, and
- (iii) From 1858 to 1949.

*First Period (1757—1813).* In this period the keynote of the Company's policy was one of non-intervention or limited liability. During this period of 56 years, the British East India Company was not very strong and so it entered into treaties with existing States on a basis of reciprocity and equality, endeavouring as far as possible to avoid annexations.

*Second Period (1813—1858).* During the second period the Company pursued a *policy of domestic intervention* and compelled the States to accept the Company as the paramount power in the country through a system of subsidiary alliances. The States joining these alliances were to conduct foreign relations through the Company and not to employ non-Britishers and Europeans. In lieu of this the British Government guaranteed the territorial integrity of the

---

\* Lee Warner, *The Native States of India*, pp. 53—58



States. Later, this policy was carried further to provide for the annexation of States. This policy was followed by Dalhousie, who evolved the theory of doctrine of lapse. This meant that in the absence of natural heirs to a throne, the sovereignty of Indian States lapsed to the British Government. The Great Revolt of 1857 was the direct outcome of the two policies of annexation and subsidiary alliances pursued during this period.

*Third Period (1858—1947).* The third period may be characterised as the period of *subordinate alliances*. There was a fundamental change in the relations of the Indian States with the East India Company after the Great Revolt of 1857. After this event, the Indian States were allowed to exist because of their usefulness as 'a breakwater to the political storm', and as faithful allies of imperialism.\* The existing Indian States were brought under the suzerainty of the Crown. The Crown offered to honour and maintain the treaties or engagements made between the Indian States and the East India Company and guaranteed their territorial integrity and rights.

#### Characteristics of Indian States

During British rule, the total number of Indian States was 561. They covered an area of 715,964 square miles or nearly 45% of the total area of India. Their population (93.2 million) comprised nearly 24 per cent of the total population of India. The States varied in size and resources. On one hand, there was the Hyderabad State with an area of 82,698 square miles, a population of about 16 million and an annual pre-war income of more than eight crores of rupees. On the other hand, there was a tiny estate under the Gujarat States Agency called Bilbari, which had an area of 165 square miles, a population of 27 souls and an annual income of Rs. 80. These States were not compact and were scattered all over the sub-continent.

They differed also in status and rank. Only 40 of them had treaty relations with the Paramount Power. A large number of them had been granted *sanads* which recognized their right to succession and guaranteed their territorial

---

\* *White Paper on Indian States*, p. 133.



integrity. The rest of them were recognized in different ways. The Indian States recognized the suzerainty of the British Crown and claimed to be sovereign in their internal affairs. The degree of autonomy enjoyed by the States varied considerably. Some bigger States like Mysore, Hyderabad, Travancore and Baroda enjoyed almost sovereign powers and were independent of control in internal affairs, while others enjoyed little or no powers. Some States were highly advanced and owned their own railways, posts and telegraphs, currency and mints, universities, etc., but most of them depended for these services on British India. Some States maintained High Courts and had introduced partial responsible government by establishing elected Legislative Councils, but in a vast majority of them complete autocracy prevailed, and civil liberties were denied to citizens. The majority of the States as a whole were feudal in character and lagged far behind the Provinces in political development.

#### **Classification of Indian States by Butler Committee (1927)**

Owing to diversity in the structure of Indian States, it was difficult to classify them on a scientific basis. The best classification was made by the Butler Committee, which divided them into three distinct categories.

(1) 108 States, the rulers of which enjoyed a permanent dynastic salute of 11 guns, and who were qualified for membership of the Chamber of Princes in their own right ;

(2) 127 States, the rulers of which were represented in the Chamber of Princes by 12 members elected by themselves ;

(3) The remaining 327 estates, jagirs, etc., which had no representation in the Chamber.

#### **Chamber of Princes**

In 1917 at the time of the visit of Mr. Montague to India, the Princes expressed a desire to form an all-India organization to discuss matters of common interest and to place the same before the Viceroy. The princes hoped that by means of this organization they would be able to escape



from the rigid control of political agents and bring the weight of their united strength to bear on the paramount power.

*Composition.* The Chamber of Princes was constituted on February 8, 1921. Originally, the Chamber consisted of 12 members, but later its strength was increased to 140 members. Membership of the Chamber was voluntary. The States of Hyderabad and Mysore did not join it. The Chamber elected a Chancellor and a Pro-Chancellor and a standing committee of 35 members. The Viceroy was the ex-officio President of the Chamber.

*Jurisdiction.* The Chamber was a purely consultative body. It discussed matters of common interest. It was not empowered to discuss the internal affairs of a State nor question the authority of a ruler in the administration of his State. If there was a conflict between one State and another, or between one State and the Central or local Government, the matter was settled by a Commission consisting of a Judge and two nominees of the parties. If the Viceroy did not agree with its finding, he could refer it to the Secretary of State for his final decision.

*Importance of the Chamber.* The idea of the establishment of a Chamber of Princes was highly commended by the Statutory Commission in its Report of 1930. "The establishment of the Chamber of Princes marks an important stage in the development of relations between the Crown and the States, for it involves a definite breach in an earlier principle of policy according to which it was rather the aim of the Crown to discourage joint action and joint consultation between the Indian States and to treat each State as an isolated unit apart from its neighbours. That principle, indeed, had already been giving place to the idea of conference and co-operation amongst the ruling Princes of India, but this later conception was not embodied in permanent shape until the Chamber of Princes was established"\*.

The Chamber of Princes did not, however, justify its existence. It acted merely as an advisory body and its deci-

---

\* White Paper on Indian States, Vol. I p. 91.



sions were not binding on the Government or on the rulers of States. The members of the Chamber could not freely express their views in the presence of the Governor-General and were overawed by him. The Chamber also made a distinction between princes and princes and proved a source of permanent discord among the rulers. It did not succeed in chalking out a common policy for improving the lot of the people of the States.

### Paramount Power and the Indian States

In their dealings with the British authorities, the Indian States were never sovereign or independent entities. Before the assumption of direct sovereignty by the Crown, it was stated that the mutual relationship between the States and the Company was based on international law, but after 1858 the British Government became the Paramount Power in India, and the existence and prosperity of the Native States depended upon 'its fostering favour and benign protection'. The Paramount Power looked after the international affairs of native States and claimed an exclusive authority of making peace or war, and of negotiating treaties with foreign powers on their behalf. In the internal affairs of the States also, the Paramount Power intervened whenever it thought it was necessary to do so in the interests of good administration or the safeguarding of imperial interests.

### Definition of Paramountcy

The term 'paramountcy' is difficult to define. It means the supreme and pre-eminent authority exercised by the Crown in relation to the internal and external affairs of Indian States. Originally, the relations between the Indian States and the British Government were governed by treaties, engagements, *sanads* and usage. But as time passed, they were treated as mere scraps of paper. The Indian States came under the control of the Crown both in their internal and external affairs. The meaning of Paramountcy or suzerainty of the Crown was explained by Lord Reading in his letter to the Nizam of Hyderabad written in 1926. He wrote, "The sovereignty of the British Crown is supreme in India and therefore no Ruler



of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogatives in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India.....The right of the British Government to intervene in the internal affairs of the Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown..... But internal, no less than external, security which the Ruling Princes enjoy is due ultimately to the *protecting power of the British Government*, and where imperial interests are concerned, or the general welfare of the people of a State is seriously and grievously affected by the action of its Government, it is with the Paramount Power that the ultimate responsibility for taking remedial action, if necessary, must lie. The varying degrees of internal sovereignty which the Rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility”.

#### **Implications of Paramountcy**

The theory of paramountcy, therefore, carried the following implications :—

(1) No State was sovereign and had any status in international law. All the States were dependencies and functioned under the supreme control of the British Government.

(2) The States were not allowed to maintain any relations with foreign Powers.

(3) The British Crown controlled the relations of Indian States in their dealings with one another and settled all their disputes.

(4) The British Crown could call upon the armed forces of the States to participate in a war in which the British Empire was involved.

(5) The British Crown could interfere in the internal affairs of the States in the interests of justice and good



government and to protect imperial interests. Reference may be made here of the deposition of the Maharaja of Manipur in 1871 on a charge of unfitness; to the abdication of the Maharaja of Nabha in 1922 and his internment in Kodaikanal in 1928 on charges of disloyalty and seditious associations; to the British Government's refusal in 1926 to permit the late Maharaja of Kashmir to exclude the heir in descent in favour of his adopted son and to the Ruler of Alwar's forced absence from his State and his deposition in 1936. In all these instances, Paramountcy was vigorously asserted to the extent of controlling succession and securing transfer of allegiance of the people of a State from one ruler to another.

From the above, it is clear that the Indian Princes enjoyed their rights only by sufferance. All rights arising out of treaties, engagements or annexations were not legally enforceable.

### **Legal Rights of States**

The Rulers, nevertheless, enjoyed certain rights which they could claim from the Paramount Power. They were guaranteed :—

- (1) Maintenance of territorial integrity of the States;
- (2) Security from external aggression and internal disturbances;
- (3) Maintenance of the dynastic rights and privileges of the Rulers.

### **Mode of the Exercise of Paramountcy**

The paramountcy of the British Crown was exercised through the Viceroy who was the representative of the British Crown in India. The Viceroy exercised complete control over the Indian States through the Political Department of the Government of India of which he was the head.

The Political Department appointed Residents or Agents to the Governor-General in Indian States. These political officers were not responsible to the princes or the subjects of the States, but only to the Governor-General. They acted as a channel of communication between the State and the Paramount Power. They kept a close watch over the



activities of the Rulers. It was at their instance that the Viceroy often intervened in the internal administration of States.

*Functions of Political Agents.* The Political Agents performed two functions :—

(1) Executive and (2) Judicial.

As heads of administration, they supervised the administration of the rulers of the States, collected tributes from them and remained in touch with the private lives of the rulers.

As judicial officers, they settled boundary disputes between different States and regulated extradition of criminals.

Thus, they enjoyed unique powers and exercised almost arbitrary authority in the States. In the words of Sardar K. M. Pannikar, "All those who have direct experience of Indian States know that the whisper of the regency is the thunder of the State and there is no matter on which the Resident does not feel qualified to give advice".

#### **The States under the Act of 1935**

The Government of India Act of 1935 sought to establish a constitutional relationship between Indian States and Provinces through a plan of an all-India federation. The Act of 1935 withdrew the paramountcy duties from the Government of India and provided for their exercise directly by the Crown. It created the office of the Crown representative, who was to act as an agent of the Crown in all dealings with the Indian States. The Governor-General, who was appointed in this capacity, was to deal with the Crown's relations with the Indian States without reference to the Government of India. This was done with the avowed purpose of driving a wedge between British India and the States.

Moreover, the proposed Federation was to be a disparate union of democratic British Indian Provinces and autocratic Indian States. The British Indian Provinces had to accede to the Federation perforce, but the Indian States were given option in the matter of acceding to the Federation. The Indian Federation could come into being only



if not less than 52 States with half the aggregate population of India signed the Instrument of Accession. The Act also granted weightage to the States, *i.e.*, although they comprised 23 per cent of the population of India, they were given 33 per cent representation in the Lower House and 40 per cent in the Upper House. This was done with the purpose of vetoing the constitutional advance of India towards responsible government.

The plan of the Federation failed to materialise because all sections of Indian opinion were opposed to this obnoxious scheme.

### **Cripps Proposals and the Indian States**

The Cripps Proposals contemplated a Union of India on the basis of the voluntary accession of the States to the Indian Union. It also made provision for negotiation by the States for the revision of their treaty arrangements. The Princes, however, decided to stay out of the Indian Union and to form a separate Union or Unions on the same terms as the non-acceding provinces.

### **The Cabinet Mission Plan and the Indian States**

The Cabinet Mission Plan declared that on the achievement of independence by India, Paramountcy would lapse. The States were advised to accede to the new Indian Union through negotiations and participation in the work of the Constituent Assembly.

### **Indian Independence Act**

The Act, while declaring that Paramountcy of the Crown would lapse, remained silent in regard to the relationship between the Dominion and the States. The Indian States were allowed to join any of the two Dominions they liked or remain independent. This created a difficult situation. As most of the States were situated within the geographical limits of India, it was very vital that they were brought into an organic constitutional relationship with her before August 15, 1947.

### **Integration of States**

The Princes as a class did not move with the times. A



vast majority of them had no sympathy with the freedom movement in India. After the declaration of transfer of power by the British, some of the States like Travancore, Junagadh and Bhopal tried to establish their independence. A few others dreamt of establishing unions of princely states. But they soon realised that it was foolish on their part to nurse such a hope. Neither the Government of India nor the subjects of the States could tolerate these ambitions. The Indian National Congress rejected the claim of independence put forward by some of the States and also the theory of paramountcy based on a personal contract between the British Crown and the Princes. The All-India Congress Committee in its Resolution passed on June 16 emphasised that "Sovereignty resides with the people, and if paramountcy lapses, resulting in the ending of the relationship of the States to the Crown, the inherent rights of the people are not affected thereby for the worse". Mr. Nehru in his speech at the A. I. C. C. asked the princes to accede to the Indian Union either individually or in groups, and warned them that the Congress would not recognize the independence of any State whatsoever.

#### **Sardar Patel's Efforts for Integration**

The policy enunciated by the Congress was carried out by Sardar Patel, the then Minister for States. He issued an appeal to all the Princes on July 5 to accede to the Indian Union in their own interest as well as in that of India, on three subjects (Defence, Foreign Affairs and Communications). This appeal was followed by an address delivered by Lord Mountbatten to the Chamber of Princes on July 25. Lord Mountbatten told the Princes that most of the States were geographically linked with India and they could not avoid this geographical compulsion. They were to accede to India only in respect of three subjects, *viz.*, Defence, External Affairs and Communications. This would relieve them of the worry of managing these affairs, without sacrificing their internal autonomy. In case they did not accede to one of the two Dominions, chaos would result which would harm them most.

This appeal had a very desirable effect on the Princes.



Most of them acceded to the Indian Union. The Nizam of Hyderabad, under the pressure of Razakars and Muslim communalists, held out for a time. But he had to accede to the Indian Union after the successful completion of the police action in September, 1948. Junagadh State had to undergo an internal revolution, as its subjects wanted the Nawab to accede to the Indian Union and the State had joined Pakistan against their wishes by deceit. After some time the ruler fled away to Pakistan and the State acceded to India at the behest of its Diwan. The accession was later confirmed by a plebiscite held in February, 1948.

Kashmir acceded to the Indian Union provisionally in October, 1948, after it was attacked by Pakistan. The Constituent Assembly of Kashmir has now ratified this formal accession.

The accession of the States to the Indian Union did not solve the problem of the States. The urgent need was consolidation of smaller States into large units and the modernization of their administrative machinery. Again, there was also great need for the introduction of self-government in the States to satisfy the political aspirations of the people. The States Ministry had to undertake the work of integration and democratisation of States simultaneously. A fresh agreement was signed with the States according to which the latter transferred to the Centre some more subjects for administration.

### Integration

The integration of States was achieved as follows.

1. 216 States with a total area of 108,739 sq. miles and a population of 1,90,00,000 were merged with the Governor's States.

2. 275 States with an area of 2,15,450 sq. miles and a population of 3,47,00,000 were merged into State's Unions. The first Union was born when 217 Kathiawar States and hundreds of estates joined to form a union called Saurashtra. Other unions followed soon after and they were known as Rajasthan, *Pepsu*, Madhya Bharat and Travancore-Cochin.

3. 61 States with an area of 63,704 sq. miles and a



population of about 70 lakhs were constituted into seven centrally-administered areas. The names of these States were: Bhopal, Kutch, Bilaspur, Tripura, Manipur, Himachal Pradesh and Vindhya Pradesh.

Only three States, namely, Hyderabad, Mysore and Jammu and Kashmir remained unaffected by the process of merger or integration. The total number of States or State's Unions to which the former 550 old States were thus reduced was 15.

In less than 2½ years after freedom, the process of territorial integration was thus complete. This reform, boldly conceived and swiftly executed, marks a historical event of unparalleled significance. In the entire history of the world there has been no comparable evolution where casualties, both of men and values, were so few.

*Privy Purses.* The rulers of all the merged or integrated States were guaranteed an annual payment called privy purse. Its basis of calculation was somewhat as follows :

For the first one lakh of State revenue	...	15 %
For the next four lakhs   ,,       ,,	...	10 %
For the next five lakhs   ,,       ,,	...	7½ %

This was subject to an overall maximum of Rs. 10 lakhs. This maximum was exceeded in the case of a very small number of States and that also for the life-time of the present rulers.

The total annual privy purse commitments of the Government of India amount to Rs. 5·8 crores. The maximum amount of privy purse has been guaranteed to the ruler of Hyderabad State, *viz.*, Rs. 50 lakhs per year. Next in order of importance are Baroda Rs. 26,50,000; Mysore Rs. 26,00,000 ; Travancore Rs. 25,00,000 ; Jaipur Rs. 18,00,000 ; Jodhpur Rs. 17,15,000 ; Bikaner Rs. 17,00,000 ; Patiala Rs. 17,00,000 and Indore Rs. 15,00,000. The minimum amount of privy purse has been provided for the ruler of Katoudia. This purse amounts to Rs. 192 per annum only.

#### Reorganization of States

The rapid integration of the Indian States described in



the previous pages, though an event of considerable historical significance, was accompanied by the carrying over to the new democratic set-up of certain vestiges of the old pattern which resulted in disparate status being accorded to the component units of the Union. Some transitional measures had, therefore, to be adopted to fit these units into the constitutional structure of the country. The States of the Indian Union were divided into three categories, namely, Part 'A', Part 'B' and Part 'C' States. The 9 part 'A' States represented the former Governor's Provinces, 8 Part 'B' States included five States Unions, and the States of Jammu and Kashmir, Mysore and Hyderabad, and the 10 part 'C' States comprised the former centrally-administered Chief Commissioner's Provinces and a few other princely States taken over under the Union administration. This arrangement was by no means satisfactory.

### Plans for Reorganization

We have said earlier that the division of India into various states and provinces was not made on any rational linguistic, administrative or financial considerations. It was based on convenience and was born out of the exigencies of the situation. Soon after independence, therefore, the States started clamouring for reorganisation on the basis of linguistic homogeneity. The Indian National Congress had lent this demand its full moral support from 1920 onwards, when at its Nagpur session it declared that the formation of linguistic provinces would be one of its political objectives. In fact, its own organizational set-up was based on some sort of linguistic division of the country.

In 1948, the Constituent Assembly appointed the Dar Commission to report on the reorganisation of States. It recommended that in forming provinces the emphasis should be primarily on administrative convenience and the principle of homogeneity of language should only subserve that end. The J. V. P. Committee appointed by the Congress at its Jaipur session to review the problem in the light of the Dar Commission's Report made a similar finding. It struck a note of warning against an unalloyed linguistic



approach and urged that in reorganising the States, the primary consideration should be the security, unity and economic prosperity of the country.

These reports, for obvious reasons, did not satisfy many sections of vocal public opinion. The result was that in several States agitation was organised for the reorganisation of the country on a linguistic basis. This agitation became very strong in Andhra and the Government had to bow down to public opinion and create a separate State of Andhradesh on October 1, 1953. Soon after this, the other States also intensified their demand. The Government of India, in the circumstances, thought it best to appoint a States Reorganisation Commission to examine the whole question objectively and dispassionately.

#### **The States Reorganisation Commission**

The Commission was constituted on December 29, 1953. It comprised three members, Shri Sayid Fazl Ali, Chairman, and Shri H. N. Kunzru and Shri K. M. Panikkar, members. The Commission toured the entire country and interviewed over 9,000 persons. It examined over 1,52,000 memoranda and submitted its report on September 30, 1955.

The Commission remarked that it could not accept language as the basis for the reorganisation of States. It laid down four tests for satisfying the requirements of reorganisation, viz., (1) preservation and strengthening the unity and security of India; (2) linguistic and cultural homogeneity; (3) financial, economic and administrative considerations, and (4) the need for the successful implementation of the Five-Year Plans.

The case put forward by each State was, however, considered on its own merits. Its final recommendations were briefly as follows :—

1. India should be divided into 15 States, namely, Andhra, Assam, Bihar, Bombay, Hyderabad, Jammu and Kashmir, Kerala, Karnatak, Madras, Madhya Pradesh, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal.

2. Three territories, namely, Delhi, Manipur and Andaman and Nicobar islands, should be administered as Central areas.



3. All part 'C' States should be abolished.

4. The constituent States of the union should be treated on a par in respect of their powers and position in the Constitution.

In a separate note of dissent, the Chairman recommended that Himachal Pradesh should be administered as a Central territory, while Shri Panikkar favoured the creation of a new State to be called the State of Agra consisting of part of Uttar Pradesh, Madhya Bharat and Vindhya Pradesh.

The report was released for eliciting public opinion on October 10, 1955. It received a mixed reception. It was considered by political parties, various public bodies, the State legislatures and Parliament. Over 1,22,000 memoranda and representations were received by the Government.

On January 16, 1956, the Government of India announced its decisions on most of the recommendations of the Commission. In doing so, it accepted most of the Commission's recommendations but altered a few of them on grounds of mutual agreement among the parties concerned. It accepted, for example, the formation of Kerala, Madhya Pradesh and the Andhra Pradesh States. In respect of Himachal Pradesh, it accepted the recommendation of the Chairman. The formation of Bombay, Gujarat and Maharashtra States proved to be the most controversial subject. The Government first decided that Bombay should be constituted into a separate City State, and Maharashtra and Gujarat should be formed into separate units. After prolonged discussions and negotiations, it was finally decided that Bombay should constitute a bilingual State, comprising the Gujarati- and Marathi-speaking areas, and the whole of Bombay.

Three draft bills incorporating the decisions of the Government were placed before Parliament. These bills were known as the States Reorganisation Bill, the Bengal and Bihar Transfer of Territories Bill, and the Constitution (7th Amendment) Bill. These three bills were finally passed by both the Houses in September, 1956.

#### **Reorganised States**

The three Acts came into force from November 1, 1956.



According to these, the Indian Union now comprises 14 States and 6 Union Territories. More than 98 per cent of the population of the country is covered by the new States and less than 2 per cent is left under Territories. The scheme does not bring about any territorial change in the States of Assam, Orissa, U. P., Jammu and Kashmir. The one entirely new State is Kerala, though it generally represents the former State of Travancore-Cochin. The enlarged Andhra State, comprising most of the former Hyderabad State, is renamed as Andhra Pradesh.

The following table gives the area, population and capitals of the re-organised States and Union Territories :—

S. No.	State/Territory	Area (in Sq. Miles)	Population	Capital/Head- quarters
STATES				
1.	Andhra Pradesh	105,963	31,260,605	Hyderabad
2.	Assam	85,012	9,043,707	Shillong
3.	Bihar	67,164	38,779,562	Patna
4.	Bombay	190,919	48,263,515	Bombay
5.	Jammu and Kashmir	92,780	4,410,000	Srinagar
6.	Kerala	15,035	13,550,631	Trivandrum
7.	Madhya Pradesh	171,201	26,072,340	Bhopal
8.	Madras	50,110	29,974,155	Madras
9.	Mysore	74,326	19,399,363	Bangalore
10.	Orissa	60,136	14,645,946	Bhubaneswar
11.	Punjab	47,456	16,134,890	Chandigarh
12.	Rajasthan	132,077	15,971,997	Jaipur
13.	Uttar Pradesh	113,409	63,215,742	Lucknow
14.	West Bengal	33,945	26,306,602	Calcutta
Total		1,239,533	357,029,055	



### TERRITORIES

1. Andaman and Nicobar Islands	2,915	30,971	Port Blair
2. Delhi	578	1,744,072	Delhi
3. Himachal Pradesh	10,904	1,109,466	Simla
4. Laccadive, Minicoy & Aminidivi Islands	10	21,441	..
5. Manipur	8,628	577,635	Imphal
6. Tripura	4,032	639,029	Agartala
Total	27,367	4,122,614	
Grand Total	1,266,900	361,151,669	

### An Assessment

The reorganisation of Indian States constitutes one of the most significant achievements of the Indian Republic in recorded history. The main features of this reorganisation are : (1) the setting-up of larger States so as to enable better co-ordination and more efficient execution of plans for economic development and welfare of the people ; (2) disappearance of Part 'C' States and their merger in adjoining States ; (3) the elimination of distinction between part 'A', 'B' and 'C' States ; (4) the ending of the institution of Rajpramukhs, the former heads of Part 'B' States, (5) the removal of the distinction between High Courts in various States and their being brought on to a uniform level, and (6) the organisation of Zonal Councils for discouraging narrow regional loyalties and promoting a wider national outlook. The perspective in which the reorganisation of States has been accomplished is admirably summed up in the following words of the States Reorganisation Commission :

‘It is the Union of India that is the basis of our nationality. It is in this Union that our hopes for the future are centred. The States are but the limbs of the Union and while we recognise that the limbs must be healthy and strong, any element of weakness in them should be eradi-



cated. It is the strength and the stability of the Union and its capacity to develop and evolve that should be the governing consideration of all changes in the country".

### ZONAL COUNCILS

One of the significant features of the States Reorganisation Act is that it provides for the setting up of five Zonal Councils. These provide a forum for inter-State co-operation, for the settlement of inter-State disputes and the promotion of inter-State development plans. The five Zonal Councils will be as follows :

- Northern Zone — comprising the States of Punjab, Rajasthan, Jammu and Kashmir and the Union Territory of Delhi and Himachal Pradesh. Area 284,000 sq. miles. Population 39 million.
- Central Zone — comprising the States of Uttar Pradesh and Madhya Pradesh. Area 284,000 sq. miles. Population 89 million.
- Eastern Zone — comprising the States of Assam, West Bengal, Bihar, Orissa and the Part 'C' States of Manipur and Tripura. Area 2,59,000 sq. miles Population 90 million.
- Western Zone — comprising the States of Bombay and Mysore. Area 265,000 sq. miles. Population 67 million.
- Southern Zone — comprising the States of Andhra Pradesh, Madras and Kerala. Area 171,800 sq. miles Population 75 million.

In the States of Punjab and Andhra Pradesh, regional committees of the legislatures have been constituted with the object of catering to the special needs of the region concerned within the framework of the unified State structure.



**Linguistic Safeguards**

Both the States Reorganisation Act and the Constitution Amendment Act have provided adequate safeguards for linguistic minorities, for it was known that even in the re-organised States there would be large groups of such people. It has been provided, for example, that each linguistic minority will have the right to receive education in its mother-tongue at the elementary stage. It is also provided that the State Governments will take steps to provide for the use of minority languages for certain official purposes, and to secure for the linguistic minorities liberal facilities in respect of secondary education and recruitment to State services. The Constitution Amendment Act further provides for the appointment of a special officer for linguistic minorities, who will report to the President on the working of the safeguards and whose reports will be laid before each House of Parliament and sent to the Governments of the States concerned.

**Select Bibliography**

- Lee Warner* : The Native States of India  
*N. D. Varadachariar* : The Indian States in the Federation  
 The White Paper on Indian States  
 Report of the Butler Committee  
 Report of States Reorganisation Committee.







---

## **AIMS OF THE CONSTITUTION**

**To secure to all its citizens;**

**JUSTICE, Social, Economic and Political;**

**LIBERTY of Thought, Expression, Belief, Faith and  
Worship;**

**EQUALITY of Status and of Opportunity.**

**And to promote among them all;**

**FRATERNITY, assuring the Dignity of the Individual and the Unity of the Nation.**

## **FUNDAMENTAL RIGHTS**

- (1) Equality before Law.
  - (2) Equality of Opportunity.
  - (3) Abolition of Untouchability.
  - (4) Right to Freedom, including Freedom of Speech, Assembly, Profession, etc.
  - (5) Protection of Life and Personal Liberty.
  - (6) Right against exploitation.
  - (7) Freedom to profess, practise and propagate any religion.
  - (8) Cultural and Educational Rights.
  - (9) Right to Property.
  - (10) Right to Constitutional Remedies.
-







## CHAPTER 17

### THE SALIENT FEATURES OF THE CONSTITUTION

The Constitution of a State is a body of rules outlining the structure of a government and determining the rights and duties of its citizens. In the words of Lord Bryce, "The Constitution of a State or nation consists of those of its rules or laws which determine the form of its government and the respective rights and duties of it towards its citizens, and of the citizens towards the government". There are marked differences in the Constitutions of various states which have resulted from the peculiarities of their political systems, needs and traditions. The Constitution of the Indian Republic, which was passed by the Constituent Assembly on November 26, 1949 and came into operation on January 26, 1950, has also certain peculiar features of its own.

#### The Preamble to the New Constitution

The New Constitution reflects the ideals and aspirations of the people of India for freedom, economic and social justice and a better life. These are embodied in the Preamble to the Constitution which runs as follows:

"We the people of India, having solemnly resolved to constitute India into a sovereign, democratic republic, and to secure to all its citizens, justice, social, economic and political, liberty of thought, expression, belief, and equality of status and of opportunity; worship; and to promote among them all fraternity assuring the dignity of the individual and the unity of the nation; in our constituent assembly this 26th day of November 1949, do hereby adopt, enact and give ourselves this constitution".

The Preamble states that the Constitution originates from the people. Some critics point out that the Constituent Assembly elected on a restricted franchise could hardly claim this right. But they forget that under conditions in which the Constituent Assembly came into being direct elections were not possible. The elections to the Provincial Assemblies which elected the members of the Constituent Assembly



had been concluded a little before. The elected members of the Constituent Assembly represented all shades of political opinion in the country and all communities, interests and groups. Eminent persons like Pandit Hriday Nath Kunzru, Sir Alladi Krishnaswami Iyer, Dr. Shyama Prasad Mukerji, Shri Gopalaswami Iyengar, Prof. K. T. Shah, Shri K. C. Neogy and others as representative of various political opinions in the country were associated with the task of framing the Constitution. As such, the resultant Constitution can be said to be the people's own charter and the fruit of their united will and efforts.

The Preamble also mentions the objectives which the Constitution seeks to promote. It establishes a sovereign democratic republic which means that the powers to be enjoyed by the State will be all-pervading and that these will be vested in the great bulk of the people and not in the hands of a favoured few. The Preamble promotes the ideal of equality and justice. It provides equal opportunities to all by prohibiting discrimination by the State on the ground of religion, race, language, etc., and regards liberty of thought, belief, faith and expression to be essential to the development of the individual and the nation. It thus seeks to reconcile the liberal ideal of individual liberty with the socialist objective of economic and social justice.

### Salient Features of the Constitution

The more important salient features of this Constitution may be summed up as follows :—

(1) *Wholly Written Constitution.* Firstly, the Constitution of India is wholly written. It does not merely deal with the broad principles of governance but also gives the details of administrative machinery. As such it is the longest constitutional document in the world. It comprises 395 Articles and 9 Schedules. No other Constitution of the world is so comprehensive and elaborate. The Constitutions of France and the U. S. A. are no doubt written, but they are supplemented by judicial interpretations and growth of conventions. Other Constitutions lay down only the broad principles of government and leave the details to be worked out by the legislatures. The Constitution of India not only determines



the structure and powers of the Union Government and of the constituent units, but also enumerates details of administration, such as recruitment procedure for public services, constitution of Public Service Commissions, election procedure, State language, minority rights, etc. Such matters could have been dealt with by legislation. It also makes provision for Fundamental Rights and mentions Directive Principles of State Policy.

Another reason for the extraordinary bulk of our Constitution is that the framers had apprehension that in the existing conditions of the country details of administration were required to prevent abuse of authority by any organ of the Government. In the words of Dr. B. R. Ambedkar, Chairman of the Drafting Committee: "It was only when people were saturated with constitutional morality that one could take the risk of omitting from the Constitution details of administration and leaving it to the legislature to prescribe them. Democracy in India is only a *top dressing on Indian soil* which is essentially undemocratic. In these circumstances, it is wiser not to trust the legislatures to prescribe forms of administration"\*

✓ (2) *Rigid and Flexible*. Secondly, the Constitution of India is partly rigid and partly flexible. It is not so rigid as the Constitution of the U. S. A. or Australia. There are three ways in which it can be amended. In the first place, there are a large number of provisions in the Constitution which can be amended by a simple majority of the votes of the members of the Union Parliament. The provisions relate to the creation of a new State or reconstitution of existing States, the constitution of Centrally-administered areas, creation or abolition of second chambers in the States and administration of the Scheduled Areas and Scheduled Tribes. Again, there are certain provisions of the Constitution which can be amended by a two-thirds majority of both the Houses of Parliament and by the ratification of such amendment by the legislatures of not less than half of the States. This procedure applies in the case of :

(i) Election of President ;

---

\* *Constituent Assembly Debate*, Vol. XIII, p. 38.



- (ii) Extent of the executive authority of the Union ;
- (iii) Relations between the Union and the States ;
- (iv) Distribution of legislative power between the Union and the States ;
- (v) Constitution of the Supreme Court and High Courts ; and
- (vi) Representation of the States in Parliament.

The third process of amendment applies to most of the remaining provisions of the Constitution. In such cases, the amendment should be passed by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of that House present and voting.

It would appear from the above, that the process of the amendment of the Constitution is not very difficult. The Constitution can thus be said to be both flexible and rigid. Such provisions of the Constitution as appear unworkable can be easily amended in accordance with the wishes of the representatives of the people. Amendments on these lines have already been effected on seven occasions. They related particularly to Articles 15, 19 and 31 of the Constitution.

(3) *Parliamentary Democracy*. Thirdly, the Constitution establishes a form of Government with the President as constitutional head. Both in the Union and in the States, the Cabinets modelled on the British system enjoy all the powers of Government. The Union President and the State Governors serve only as constitutional heads.

But it might be mentioned here that though India has adopted the parliamentary system of government on the British model, its Parliament is not a sovereign body in the same sense as the British Parliament. The former is a creature of the Constitution and can act only within the limits of authority vested in it by the Constitution. The Supreme Court is empowered to declare upon the constitutionality of a law if it ever exceeds the jurisdiction of the legislature. However, the Parliament of India can amend the Constitution if the Supreme Court proves obtrusive. Thus, the Indian Constitution cuts the *via media* between the American system of judicial supremacy and the British system of parliamentary supremacy.

(4) *Strong Centre*. Fourthly, though the Constitution



provides for a federal form of government, it has a pronounced unitary bias.

A federation is a fusion of several states into a single Union in order to safeguard certain common interests, according at the same time autonomy to the constituent units in their internal matters. The units are not mere agents of the Central Government but derive their authority from the Constitutions.

The Indian Constitution possesses the fundamental features of a federation, *viz.* (1) supremacy of the Constitution; (2) constitutional division of powers; and (3) authority of the Supreme Court as an interpreter and guardian of the Constitution. However, the Constitution possesses certain unique features which have led writers to characterise it as a "quasi-federation", "a unitary State with subsidiary federal features rather than a federal State with subsidiary unitary features", "a federation with a strong centralizing tendency", etc. What are the reasons for these different interpretations?

✓ *Peculiar Features of the Indian Federation.* (1) In the first place, the framers of the Constitution have used the word 'union' and not 'federation' to explain that the type of federation the Constitution was going to adopt was of the Canadian type. In the Canadian federation, the Union was not formed by a voluntary agreement between the component independent states, but was imposed by a British statute, which first withdrew all powers from the provinces and later on redistributed them among the Dominion and the provinces. The same thing has been followed in India. The new Constitution of India broke up the unitary State of India into autonomous States and then redistributed powers between the Union and the States.

✓ (2) In the second place, the division of powers in the Federation is such that all vital matters have been vested in the Centre. The Union List is exhaustive and contains 97 subjects. The State List contains only 66 items. The Concurrent List on which the Centre can legislate contains as many as 47 subjects. The residual power of legislation is vested in the Central Legislature. Further, the legislative authority of the Union Government can be extended to any



subject given in the State List by a resolution of the Council of States or at the request of two or more States.

(3) In the third place, the new Constitution is so framed that in emergencies it can be made to work as a unitary State. It is open to the Union Government to supersede a State Government which refuses to carry out its directions as authorized by the Constitution (Article 365), and to assume to itself the powers of the State Government concerned (Article 356). Again, the President is empowered to appoint the Governor of a State who shall hold office 'during the pleasure of the President' (Article 155—6). The President in times of emergency, *e. g.*, a war, internal disorder, a breakdown of the constitutional machinery in any of the States, or a financial crisis, can issue a 'Proclamation of Emergency' and assume all powers of legislation and administration of the constituent units. No such provisions are to be found in any other federal constitution of the world.

(4) In the fourth place, the constituent states do not enjoy equality of representation in the Council of States as the constituent units do in other federations. In India seats are assigned to the States in the Federal Upper House on the basis of population and not on the principle of equality of representation.

(5) In the fifth place, the States' autonomy is restricted by reason of certain provisions in the Constitution. Their boundaries can be altered at any time. They may be incorporated in other States. The President's prior sanction or assent after reservation is required in certain kinds of State laws. In respect of finance also the States are dependent upon the Union Government to a large extent. Their sources of revenue are limited and they have to look to the Union Government for financial assistance.

(6) In the sixth place, to maintain unity in the country the Indian Constitution provides for a single citizenship for the whole country. In the U. S. A. and Switzerland, there is double citizenship, *i. e.*, citizenship of the Union and citizenship of each of the constituent States. Under the Indian Constitution, there is only one citizenship and so the States cannot discriminate in favour of their own citizens in political matters, as is possible in the States in America.



(7) In the seventh place, the Constitution provides for a unified system of judiciary in the whole of India. The Supreme Court enjoys supreme authority and control over all State courts, which in turn control the lower courts.

(8) In the eighth place, there is a common cadre of superior administrative services for the whole of India. The members of these all-India services are recruited and controlled by the Union Government and they hold key posts both in the Union and State Governments. There is also a uniform civil and criminal code throughout the country. All this has preserved the unity of the country and has prevented any emergence of confusion arising from diversity of laws and conflict of jurisdictions, resulting from the application of such laws in different States.

(9) Lastly, Parliament has been given the power to amend the provisions of the Constitution affecting the State. The States do not enjoy any such concurrent authority to amend their own constitutions.

*Indian Constitution is Truly Federal.* But, in spite of what has been said above in support of some of the unitary features of our Constitution, the fact remains that normally and basically our Constitution is federal. It possesses all the fundamental characteristics of a federation. It will not be possible for the Union Government in normal times to usurp the powers of the units, except by their consent. It is only in emergencies that the Union Government can make serious encroachments on the powers of the States. In this connection, the observations of Dr. B. R. Ambedkar deserve notice. He said : "A serious complaint is sometimes made that there is too much of centralization in our Constitution and that the States have been reduced to municipalities. It is clear that this view is not only an exaggeration but is also unfounded. It is based on a misunderstanding of what exactly the Constitution contrives to do.

"As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of Federalism is that the legislative and executive authority is partitioned between the



Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does. The States are in no way dependent upon the Centre for their Legislative or Executive authority. The States and the Centre are co-equal in this matter.

“It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre too large a field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism.

“The chief mark of federalism lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our Constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. The Centre cannot by its own will alter the boundary of this partition. Nor can the judiciary. For as has been well said :—‘Courts may modify, they cannot replace. They can revive earlier interpretations as new arguments; new points of view are presented, they can shift the dividing line in marginal cases, but there are barriers they cannot pass, definite assignments of power they cannot reallocate. They can give a broadening construction of existing powers, but they cannot assign to one authority the powers explicitly granted to another’. The first charge of centralization defeating federalism must therefore fall.

The second charge of centralization is that the Centre has been given the power to override the States. This charge must be admitted. But before condemning the Constitution for containing such overriding powers, certain considerations must be borne in mind.

“The first is that these overriding powers are not the normal features of the Constitution. Their use and operation are expressly confined to emergencies only. The second consideration is : Could we avoid giving overriding power to the Centre when an emergency has arisen? Those who do not admit the justification for such overriding powers to



the Centre even in an emergency do not seem to have a clear idea of the problem which lies at the root of the matter.

“The solution of this problem depends upon one’s answer to this question which is the crux of the problem. There can be no doubt that in the opinion of the vast majority of the people, the residual loyalty of the citizen in an emergency must lie to the Centre and not to the Constituent States. For it is only the Centre which can work for a common end and for the general interests of the country as a whole. Herein lies the justification for giving the Centre certain overriding powers to be used in an emergency. And, after all, what is the obligation imposed upon the Constituent States by these emergency powers? No more than this that in an emergency, they should take into consideration alongside their own local interests the opinions and interests of the nation as a whole”.

#### **Why was the Centre created so strong ?**

The reasons which necessitated the strengthening of the Centre in India were far too many. They may be summarised as follows : ✓

(1) The different units of the Indian Federation were not equally developed and progressive. Central control was deemed necessary to secure uniform development of the country, including that of the backward classes of the population.

(2) A strong central Government was necessary to check disruptive forces in the country set into motion after partition. During the struggle for independence from the foreign yoke, nationalism formed the basis of unity among Indians. After Independence, separatist tendencies gathered momentum and these threatened to disintegrate the country. The framers of the Constitution wanted to take no undue risk about the maintenance of national unity and therefore they conferred larger powers on the Centre to resist internal disorder and external aggression.

(3) There was also the urgent need to develop the economy of the country on a nationwide basis. This could only be possible if the Central Government was invested with sufficient powers to launch a scheme of national planning.



(4) The administrative machinery which was organised on a uniform basis before Independence also helped in the process of unification and centralization.

(5) The extraordinarily dynamic leadership of Pandit Nehru and the dominant and unitary control exercised by the Congress both at the Centre and in the Units was another factor that contributed to centralization.

(6) The integration of the Indian States and their democratisation also enabled the Central Government to assume powers of control over the units. The voice of the princes, who were clamouring for State autonomy, was drowned in the popular demand of the State subjects for democratic rights.

(7) Lastly, India had attained political unity after centuries of division and discord, and in the face of great difficulties. The forces of casteism, creedism and the lack of disciplined political parties in the country necessitated the establishment of a strong Centre to ensure smooth working of the new Constitution.

#### Other Characteristic Features of the Indian Constitution

(5) *Secular State.* The fifth important feature of our Constitution is its secular character. The word 'secular' does not mean that the State is irreligious or anti-religious. It means that so far as the State is concerned, it shall not discriminate between one citizen and another in any sphere of life, civic or political. Private citizens shall be free to follow any religion. The State shall not impart religious instruction in educational institutions run by it. The secular character of the State will not prevent the State from interfering with any undesirable activities associated with religion. It would, for example, be authorised to throw open temples to untouchables and to prevent abuse of religious practices. Strangely enough, the true nature of secularism is not understood by some people. It has, for example, aroused misgivings in the minds of orthodox sections of the Hindus. They point out that India should have been declared a Hindu State and adequate provisions should have been provided in the Constitution to protect the interests of religious minorities. The Irish Constitution



accords special recognition to the Catholic Church as being 'the guardian of the faith of the great majority of the citizens'. At the same time, it guarantees religious freedom to all. However, the modern tendency of States nowadays is that the State should maintain its secular character. For this reason, religious neutrality is regarded as an essential mark of a progressive state. If the State begins to recognise any religion as State religion, it is likely to create uneasiness in the minds of a large number of religious minorities. Pakistan has declared itself an Islamic Republic. Non-Muslims in spite of the promise given to them of fair treatment by the State are feeling greatly disturbed and this has led to a great exodus of the Hindu population from Pakistan to Indian territory. It is, therefore, wrong to associate religion with politics. All progressive States refrain from regulating the religious beliefs of people and conform to the ideals of secularism.

(6) *Sovereign, Democratic Republican Constitution.* The next important feature of our Constitution is that it establishes a sovereign and democratic republic in India. It is sovereign because it is not subject to any restraints from an outside authority, either in respect of its internal or foreign policy. It is democratic because all political authority is derived from the people and is exercised by a Government consisting of the representatives of the people, elected on the basis of universal adult suffrage. It is republican in the sense that the head of the Indian Government is not a hereditary monarch but an elected president.

The sovereignty of India does not preclude the country from retaining its membership of the United Nations or of the British Commonwealth of Nations. Such membership is purely voluntary and promotes friendliness and cooperation among member-states.

**India's Membership of the Commonwealth of Nations. Does it detract from her sovereignty?**

*The Meaning of the Commonwealth.* India's membership of the Commonwealth of Nations is misunderstood in certain quarters. It is because many people do not fully understand the true nature of the Commonwealth relationship. Com-



monwealth is not the name of any state or super-state or even a federation of States. It is a family of nations bound together by common consent and owing allegiance not to any state but certain democratic principles and ways of life. It is an international association of free states, although its membership is confined to those communities which were formerly parts of the British Empire but have now attained independence. The Commonwealth members meet together to discuss matters affecting their common interests. Members are free to accept or reject the decisions made in the conferences.

*Changing structure of Commonwealth.* According to the Statute Westminster, a Commonwealth was defined 'as autonomous communities within the British Empire, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations'. According to this definition, members of the Commonwealth enjoyed internal and external sovereignty. They were, however, required to owe formal allegiance to the Crown who became the symbol of unity and the golden chain to bind them. This meant that no member could become a Republic. However, a great change occurred in the framework of the organization with the decision of India to continue as a member of the commonwealth even after her declaration as a sovereign, independent republic. A meeting of the Commonwealth premiers was held at London in October 1948 which allowed India to continue her membership of the Commonwealth despite her becoming a Republic. The name of the organisation consequently underwent a change from 'British Commonwealth of Nations' to 'Commonwealth of Nations'. The Commonwealth is now a multiracial organization with a predominance of Asian States (India, Pakistan, Ceylon, Ghana) as major partners in the new family of nations.

India's membership of the Commonwealth does not in any way detract from her sovereignty. Her independence in internal and foreign affairs is complete. The king is the 'symbol of the free association of its independent member nations and as such the head of the Commonwealth'. The



bond which unites the members of the Commonwealth are common ideals and purposes and mutual interests. A member-state can continue membership so long as it desires and can withdraw at any time. Membership imposes on States the only obligation of 'close consultation and mutual support.'

*Criticism of membership of Commonwealth.* Certain persons are critical of India's decision to retain Commonwealth ties with Britain. They point out that such association is derogatory to the self-respect of India as a nation. There is no affinity of race, religion or language between India and the white members of the Commonwealth. This criticism is not realistic. As pointed out by Pt. Jawaharlal Nehru, "The New Commonwealth does not restrict India's independence either in the external or internal sphere. It has no strings attached to it. India is not compelled to stay in the Commonwealth even one minute longer than she may desire to. The agreement is in full accord with Congress pledges and India's foreign policy of non-alignment with power blocs. It gives to India 'independence' plus security in the political and economic spheres."

#### Advantages to India from membership of the Commonwealth

India's membership of the Commonwealth does not detract from her sovereignty in the least. India is not subordinate to Britain in any way. India is likely to derive practical advantages from her continued membership of the Commonwealth. India needs Britain's help for maintenance of its security and defence and for securing technical assistance for the development of her economy. About 70% of India's foreign trade is carried on with Commonwealth countries and severance of ties with Britain will upset India's economic applecart in the British market.

India has gained in political prestige by retaining Commonwealth ties, though of late, on account of the British attitude on the Suez Canal and Kashmir question, the wisdom of our continuing relationship has been widely questioned. It was thought until sometime ago that the Commonwealth organization exists to promote peace and co-operation in the world and India can make her distinctive contribution to the cause of international peace by suggesting ways and



means of easing world tensions. But now on account of the Tory Party's attitude the situation is gradually changing.

(7) *Guarantor of Fundamental Rights.* Another feature of our Constitution is that it is the guarantor of Fundamental Rights. In keeping with the traditions of progressive democratic countries of other parts of the world, the Indian Constitution guarantees fundamental civic, political, religious and social rights to the people. These rights relate to equality, personal liberty, rights against exploitation, right to religious freedom, cultural and educational rights, right to property and right to constitutional remedies. These rights are justiciable and inviolable and are binding on the Legislature and the Executive. Any executive order or any law inconsistent with these rights shall be declared null and void by the High Courts and the Supreme Courts. Citizens are permitted to move the Supreme Court for the protection of their rights. These rights are, however, subject to various limitations imposed in the interests of security of the State.

(8) *Welfare State.* Our Constitution does not merely guarantee the civic rights of citizens; it also promises them full protection of their economic and social rights. This it does in the shape of the Directive Principles of State Policy. These principles set forth a positive programme for realising the economic well-being of the masses and are in the nature of instructions of the executive and the legislature that they should make every effort to provide conditions of social security to the citizens. The State should provide adequate livelihood and equal pay for equal work to all citizens. It should also protect the young against exploitation. It should promote the organisation of panchayats as units of self-government. It should promote international peace and security and try to maintain just and honourable relations among nations. The Directive Principles of State Policy cannot be enforced in the courts. They are, however, by no means valueless or superfluous. They serve as sign-posts and guide the state in fulfilling the ideals set before it.

(9) *Enemy of Communalism.* Another important feature of our Constitution is that it is the enemy of commu-



nalism. The vicious system of communal electorate which embittered the relations of the two majority communities in India and eventually led to the partition of the country has been abolished under the new Constitution. This does not, however, mean that the rights of the minorities have not been adequately protected. The Harijans, the Scheduled Tribes and some backward classes amongst the Sikhs have been guaranteed reservation of seats in the legislatures and services for ten years from the commencement of the Constitution. The educational and cultural rights of the minorities and backward classes have also been equally protected.

(10) *Independent and Sovereign Judiciary.* Lastly the Constitution establishes an independent and sovereign judiciary in India. All courts in India are bound to accept and enforce the decisions pronounced by the Supreme Court. The latter acts as an interpreter and guardian of the Constitution and also as protector of the fundamental rights of citizens.

The Directive Principles of State Policy further provide that the State shall make every endeavour to secure the separation of the executive and judicial functions of the State and thus ensure independence of the judiciary.

Thus, the Constitution of India establishes a parliamentary and responsible form of Government and fully safeguards the liberties of the citizens. If in spite of these safeguards, we do not live in security and happiness, then in the words of Dr. Ambedkar 'the reason will not be that we had a bad Constitution but that man was vile.'

#### Select Bibliography

Dr. B. R. Ambedkar in the Constituent Assembly,  
C. R. P. Vol. VII.

*Jennings* : Some Characteristics of the Indian Constitution

*Wheare* : India's New Constitution Analysed (1950)  
S. D. L. R. 25 (Journal)

*Wheare* : Federal Government : 2nd Edition.

Constituent Assembly Debates Vol. V

Speech of N. Gopalswami Ayyanger 36—42 and 102—105;

Alladi Krishnaswami Ayyar—75—76.



## CHAPTER 18

### CITIZENSHIP, FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY

#### **Conditions for Citizenship.**

The Constitution of India did not lay down detailed provisions for citizenship. It simply said 'who shall be the citizens of India at the commencement of the Constitution'. It gave Parliament the sole right of determining future citizenship. This was done to meet the unusual situation arising from large-scale migration of populations between India and Pakistan. Even today, Hindus in very large numbers are coming from Pakistan to India. They have now been recognized as citizens of India by virtue of the Citizenship Act passed by Parliament in December 1955. The same Act has made provision with respect to the acquisition and termination of citizenship after the commencement of the Constitution.

*Citizenship at the Commencement of the Constitution.* The Constitution classified five categories of people entitled to the right of citizenship at the commencement of the Constitution.

(1) All persons who were born as well as domiciled in the territory of India or either of whose parents were born in the territory of India or who were residing in the territory of India for not less than five years immediately preceding the commencement of the Constitution were declared as Indian citizens.

(2) Those who migrated from Pakistan to India before July 19, 1948 (the date on which the permit system was introduced) and have been residing in India since then were declared as citizens, provided they or either of their parents or any of their grand-parents were born in India before Partition.

(3) Those persons who migrated from Pakistan to India on or after July 19, 1948 were recognized as citizens of India provided they or either of their parents or any of



their grand-parents were born in India before Partition, and if they were residing in India for not less than six months before the commencement of the Constitution and were duly registered as citizens before a competent authority on an application made for the purpose.

(4) Those persons who migrated from India to Pakistan after March 1, 1947 were disqualified for Indian citizenship. However, if they returned to India under a permit for permanent resettlement, they could be registered as citizens.

(5) Persons of Indian origin residing outside India were declared as citizens, if they registered themselves as such at foreign diplomatic or consular posts of India.

### Criticism of Citizenship Provisions.

The provisions of the Constitution relating to citizenship were subjected to strong criticism in the Indian Constituent Assembly. Dr. Punjabrao Deshmukh said, "They have made the Indian citizenship cheapest in the world". Prof. K. T. Shah said, "foreigners having five years' residence could acquire Indian citizenship for the purpose of pursuing their economic enterprises". Again, it was pointed out that foreign governments denied citizenship rights to Indians even after their residence in those countries for fifteen to twenty years. The nationals of such countries should not have been granted citizenship rights. These criticisms were kept in view while framing the Citizenship of India Act which, as pointed out earlier, came into force in January, 1956.

### The Citizenship Act.

The Citizenship Act passed by Parliament provides for the acquisition of citizenship, *after* the commencement of the Constitution, by birth, descent, registration, naturalisation and incorporation of territory.

The Act lays down that every person born in India on or after January 26, 1950 shall be a citizen of India by birth.

A person born outside India on or after January 26, 1950 shall be a citizen by descent if his father is a citizen of India at the time of his birth.



Displaced persons from Pakistan who were not recognised as citizens under the provisions of the Constitution would now be able to acquire citizenship by registration. Persons of Indian origin living outside India would be able to register themselves as citizens at the appropriate Indian Consulate. Citizens of the Commonwealth and of the Republic of Ireland would further be able to register themselves as Indian citizens, if they so desired, provided they had the requisite residence or service qualifications.

Provision has also been made in the Act for the acquisition of citizenship by naturalisation. Under these provisions, aliens would be entitled to apply for naturalisation in the prescribed manner.

Lastly, citizenship rights would become available through incorporation of territory. In other words, if any foreign territory becomes a part of India, the residents of that territory would be entitled to acquire the citizenship of India automatically.

### **Termination of Citizenship**

The Act has also made necessary provisions for the termination and deprivation of citizenship under certain circumstances. A citizen of India by voluntarily acquiring citizenship of a foreign State will forfeit the citizenship of his country. The Central Government may deprive a person of citizenship if it is satisfied that such a person obtained the certificate of naturalisation by fraud, or that the citizen proved disloyal to the Government established by law in India, or assisted any enemy country during any war in which India was engaged and on other grounds not conducive to public order. Before, however, making an order under these provisions, the Central Government will refer the case of such a person to a committee of inquiry and would afford the individual to be proceeded against all opportunities for clarifying his position.

## **FUNDAMENTAL RIGHTS**

### **Origin and History.**

The theory of Fundamental Rights which became the basis of revolutionary creed in the 18th century has a phi-



Policy.\* Moreover, the Directive Principles ensure continuity of national policies and safeguard them from the 'vicissitudes of fortunes of political parties which may come into and go out of power from time to time.' They cannot be ignored, whether the party in power is reactionary or progressive. They cannot be flouted for long by a party in power, because the authorities of the State will have to answer for them before the electorate at the time of general elections. Their effectiveness, however, shall depend upon the eternal vigilance of the people and their political education. If public opinion is well organized and legislators and administrators are conscious of their responsibilities, they shall try their level best to implement these principles.

\* The Supreme Court in the State of Bihar versus Sir Kameshwar Singh held that the Bihar Land Reforms Act of 1950 was enacted for a public purpose in accordance with the Directive in Article 39, because its object was to remove concentration of big blocks of lands in the hands of a few individuals.

### Select Bibliography

Constituent Assembly Proceedings, Vol. VII.

Jennings : Some Characteristics of Indian Constitution, Chapter 3 and 4.

Ramaswami : Fundamental Rights.

Gledhill : The Republic of India : Chapter 2.

D. D. Basu : Commentary on the Constitution of India (1955 Edition), pp. 58-404.

Fergusson and McHenry : American Federal Government.

Supreme Court Report (Government of India Publication).

Agarwal, Om Prakash : Fundamental Rights and Constitutional Remedies, Vols. 1 and 2.



## CHAPTER 19

### THE PRESIDENT OF THE INDIAN UNION

#### Nature of the Union Executive

The new Constitution of India establishes a parliamentary form of government both at the Centre and in the States. The executive power of the Union vests in the President who, however, exercises his powers on the advice of his Ministers responsible to the Lok Sabha. He does not exercise real powers; he is a titular head of the State. The Council of Ministers under the leadership of the Prime Minister constitutes the real Executive.

#### Why Parliamentary Form of Government was chosen

In the Constituent Assembly, a section of members was in favour of adopting the Presidential type of government due to its stability, vigour and firmness, but the vast majority was in favour of the Cabinet system of government. The considerations which influenced the constitution-makers in arriving at this decision were :—

(a) The Cabinet system had been functioning in various provinces of India since 1937. Even in the Centre, the Governor-General's Executive Council had been functioning from 1946 onwards, more or less on the cabinet model.

(b) The Cabinet system secures harmonious co-operation between the Executive and the Legislature.

(c) Compared to the Presidential form of Government, the Cabinet form of government is more responsive to public opinion.

These considerations were ably summed up by Shri Alladi Krishnaswami Iyer, a leading member of the Drafting Committee in these words : "There are weighty reasons why what may be called the Cabinet type of government should be preferred in this country to what is generally known as the Presidential type of government . . . . . An infant democracy cannot afford, under modern conditions, to take the risk of a



perpetual cleavage, feud or conflict or threatened conflict between the Legislature and the Executive. The object of the present constitutional structure is to prevent a conflict between the legislature and the executive and to promote harmony between the different parts of the governmental system. . . . After weighing the pros and cons of the Parliamentary executive as they obtain in Great Britain, in the Dominions and in some of the Continental Constitutions, and of the Presidential type of government as it obtains in the U.S.A., the Indian Constitution has adopted the institution of Parliamentary executive.”\*

### Qualifications for Presidentship

A candidate for Presidentship must be a citizen of India, of at least 35 years of age, and qualified for election to the House of the People. He or she must not be holding any office of profit under the Government. The offices of the Vice-President, Governor or Ministers are not considered as offices of profit. He or she may be a member of a Legislature but he or she will have to vacate his seat on assuming office as President.

*The Election of the President.* The President is elected for a term of five years by an electoral college consisting of the elected members of the Union Parliament and of the lower chambers of the State Legislatures. He is eligible for re-election.

*Indirect Election of the President.* The reasons why the Constituent Assembly decided to have the President elected indirectly are :—

(1) In a Parliamentary form of Government, the real executive authority vests in the Ministry and not in the President who serves only as a nominal figure-head. If the President is elected directly, he will claim to derive his authority from the people and will come into conflict with the Cabinet and the Parliament. The framers, to avoid apprehension of such a conflict, provided for the indirect election of the President.

\*Constituent Assembly Proceedings, Vol. VII, pp. 32-33.



(2) It was difficult to provide for the Presidential election an electoral machinery of about 18 crore voters. This would have involved an enormous expenditure and wastage of time.

(3) The electoral college consisting of representatives of the Union Parliament and of the lower chambers of States will ensure the return of a national leader and will avoid a partisan choice. ✓

### **Procedure of Election**

To ensure uniformity of representation to the different States at the Presidential election as well as parity between the States as a whole and the Union, the framers of the Constitution have devised an ingenious method. Each elected member of a Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly. Further, each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of all the States by the total number of elected members of both Houses of Parliament, fractions exceeding half being counted as one and other fractions being disregarded.

An example will make the system clear.

The population of Uttar Pradesh is 614,00,000, while the number of elected members in the Legislative Assembly of the State is 430. To obtain the actual number of votes for each elected member of this Assembly, we have first to divide the total population, *i. e.*, 614,00,000 by 430 and then the quotient by 1000. We get the result as 143. Thus, the number of votes which each member of Uttar Pradesh Legislative Assembly is entitled to cast is 143.

In the Presidential election held in May 1952 and 1957, the votes for each member of a State Legislative Assembly and each member of Parliament worked out as follows :—



## 1952 Election

Name of State Assembly	No. of votes for each member	Name of State Assembly	No. of votes for each member
1. Assam	79	13. Mysore	81
2. Bihar	119	14. PEPSU	55
3. Bombay	104	15. Rajasthan	92
4. Madhya Pradesh	90	16. Saurashtra	66
5. Madras	145	17. Travancore- Cochin	79
6. Orissa	103	18. Ajmer	24
7. Punjab	100	19. Bhopal	28
8. Uttar Pradesh	143	20. Coorg	7
9. West Bengal	102	21. Delhi	31
10. Hyderabad	101	22. Himachal Pradesh	30
11. Kashmir	59	23. Vindhya Pradesh	65
12. Madhya Bharat	79		

## 1957 Election

Name of the State	Value of votes for each member
1. Andhra Pradesh	104
2. Assam	84
3. Bihar	122
4. Bombay	122
5. Kerala	108
6. Madhya Pradesh	91
7. Madras	146
8. Mysore	93
9. Orissa	105
10. Punjab	105
11. Rajasthan	91
12. Uttar Pradesh	147
13. West Bengal	104
14. Jammu and Kashmir	59

Votes for the elected members of the two Houses of Parliament are determined by dividing the total number of votes assigned to members of the Legislative Assemblies by the total number of elected members of Parliament. On this basis, the figure for the 1952 election worked out at 494 and that for the 1957 election at 496. The total number of



votes cast in the 1952 elections was 6,35,306 out of 6,90,557 and in the 1957 elections 4,63,196, out of 7,17,240.

In the 1952 elections, the votes were divided among the five Presidential candidates as follows :

1. Dr. Rajendra Prasad	5,07,400	80%
2. Prof. K. T. Shah	92,827	15%
3. L. G. Thatte	2,072	·5%
4. Hari Ram	1954	·5%
5. H. K. Chatterji	553	·5%

In the 1957 elections, the votes were divided among the three Presidential candidates as follows :—

1. Dr. Rajendra Prasad	4,59,698	99%
2. Nagendra Narayan Das	2,000	·5%
3. Hari Ram	1,498	·5%

#### System of Proportional Representation—Its Significance

Election is held in accordance with the system of proportional representation by single transferable vote by secret ballot.

The system of proportional representation by means of the single transferable vote is adapted from the Constitution of Eire. It is based on the method first advocated by one Thomas Hare. In addition to Presidential elections, this system has also been adopted for the election of representatives of the States in the Council of States, and for the election of members of the Legislative Council of a State.

The system operates in a multi-member constituency. All the candidates who contest a seat allotted to a constituency have their names printed on the ballot paper. Each voter has only one effective vote and is required to indicate his first, second, third preferences and so on against each candidate. For success in the election a certain quota of votes is necessary. This quota is obtained by the formula:—  

$$\frac{\text{Total number of valid ballot papers} + 1}{\text{Number of members to be elected} + 1}$$

Suppose, the total number of valid papers are 18,000 and the number of candidates to be elected is 6, then the quota will be  $\frac{18000}{6+1} + 1 = 2572$ . In the first counting



the first preference votes alone are counted, and a candidate who secures this quota is declared elected. The surplus of his first preference votes which are of no use to him are transferred to candidates securing the second preference. At the same time, persons getting the minimum number of votes are eliminated from the election and their votes are also transferred to other candidates. In this way, the process is repeated till the required number of candidates are declared elected.

The principle of proportional representation, it is said, can never have any relevant meaning or significance when the constituency is a single-member one. Defenders of this plan, however, point out that it ensures an absolute majority of the total number of votes for a candidate to be elected. Let us take an example. Suppose the total number of voters for a Presidential election is 100 and there are three candidates in the field. They poll votes as under :

A	—	43
B	—	42
C	—	14

Since no candidate gets more than 50 per cent of votes, the votes of C are transferred to A and B as per the second preference expressed by the voters. The result is as follows :

A	—	43	+	4	=	47
B	—	42	+	10	=	52

Since on this second count, B gets more than 50 per cent of votes, he is declared elected, although in the first count A got more votes than B.

The Plan also helps the minorities to exercise their due weight in the election of the President. If no party can claim to secure an absolute majority of total votes in the electoral college, then a candidate will have to enlist the support of two or more parties to succeed in the election. Lastly, it is said that this system is an improvement over the system obtaining in the U. S. A., where the President is elected not so much in reality by the electoral college as by the people. The election of the President of the Indian Union is not in that sense a partisan choice. In the electoral college in India, the States representatives enjoy the same number of votes



as the elected members of Parliament. As such, there is less occasion for the display of partisan spirit.

#### **Salary, Allowances, etc.**

The President receives a salary of Rs. 10,000 per month. This salary cannot be reduced during his term of office. In addition to the salary, he gets an official residence free of rent and other allowances determined by Parliament. On retirement, he is entitled to a pension of Rs. 15,000 per annum.

#### ✓ **Impeachment of the President**

The Constitution provides for the impeachment of the President for the violation of the Constitution. A motion for impeachment can be initiated in either House of Parliament but it must be passed in the form of a resolution by a two-thirds majority. Before such a motion can be taken into consideration, a notice of fourteen days signed by one-fourth of the total membership of either House is necessary. When one House has passed a resolution of impeachment against the President by the required majority of votes, the resolution is submitted to the other House for investigation. In this House the President is given an opportunity to appear and represent his case. If, after investigation of the charges, the other House passes a resolution of impeachment by a two-thirds majority, the President is forthwith removed from office.

#### ✓ **Protection and Immunities**

The President's office is one of great dignity and prestige. He is not answerable to any court of law for the exercise of the powers and duties of his office except in case of impeachment. No criminal proceedings can be instituted against him during his tenure of office. Civil proceedings in which relief is claimed from him cannot also be initiated except by two months' prior notice.

#### **Powers of the President**

The Constitution confers on the President an array of powers which may be discussed under five heads : Executive, Legislative, Judicial, Financial and Emergency.

*Executive Powers.* The Constitution lays down that all executive authority of the Union is vested in the President.



The entire administration of the Government of India is carried on in the name of the President and all important decisions bear his seal. He makes rules of business for the Government of India and allocates work to the ministers. He is kept informed by the Prime Minister of all the decisions made by the Cabinet and other information regarding administrative affairs. He is the Commander-in-Chief of the Defence Forces and makes all important appointments including those of Governors of States, Ambassadors, the Chief Justice and Judges of the Supreme Court and State High Courts, the Attorney-General of India, the Comptroller and Auditor-General of India and the Chairman and members of the Union Public Service Commissions, the Finance Commission and the Language Commissions. He also makes rules for the convenient transaction of the business of the Government. ✓

The President also administers the centrally-administered areas through the Chief Commissioners appointed by him. He appoints an Inter-State Council for settling Inter-State disputes and for co-ordinating the policies and actions of States. He also makes appointments of special officers for the protection of the rights of the Backward Classes. ✓

*2. Legislative Powers.* Like the Crown in England, the President is part of the legislature. He can summon, adjourn and prorogue either House of Parliament and dissolve the House of the People. He can summon joint sittings of both Houses if there is no agreement between them on a bill. He has the power to nominate 12 members to the Council of States and 2 Anglo-Indians to the House of the People, if no Anglo-Indians are otherwise elected to that House. He can address either House separately or both Houses together. He can also send written messages to them. At the commencement of every session of Parliament each year, he has to address members outlining the policy of the State, on the same lines as the King's speech is delivered in the British Parliament.

*Assent to Bills.* After a Bill is passed by Parliament, the President may give his assent to it or withhold it or return it for reconsideration by Parliament. But if a Bill



returned for reconsideration by Parliament is again passed by both Houses with or without amendments suggested by the President, the President must give his assent to the Bill.

*Ordinances.* The President has also the power to promulgate ordinances at any time when Parliament is not in session. Such ordinances remain valid for six weeks from the date of the reassembly of Parliament unless both Houses pass resolution disapproving of them earlier.

3. *Judicial Powers.* The Constitution confers on the President some quasi-judicial powers. He appoints the judges and Chief Justices of High Courts and the Supreme Court. He grants pardons, reprieves (stay of execution), respites (awarding lesser sentence than pronounced by courts), or remission (reduction of sentences already undergone) of punishment to persons convicted of crime. He can refer important constitutional points to the expert opinion of the Supreme Court. He can hear appeals from Rajpramukhs against depositions or diminution in their privileges. ✓

4. *Financial Powers.* The President enjoys financial powers as well. At the beginning of every financial year, he causes to be laid before Parliament the annual budget or the 'Financial Statement' of the Union. This statement shows an estimate of the annual revenues and expenditure of the Union for the year. No demand for grant and no money bill can be introduced in the House except on his recommendation. Pending the approval of Parliament, he can make advances out of the Contingency Fund to meet unforeseen expenses. He also distributes shares of income-tax receipts and export duty on jute to different collecting States. He makes the appointment of the Finance Commission to recommend measures on various financial matters and on financial relations between the Union and the States. ✓

5. *Emergency Powers.* The President exercises immense powers to deal with three kinds of emergencies : (a) Emergency caused by war and internal disturbance or threat thereof; (b) Emergency arising from the break down of constitutional machinery in any State or States; and (c) Emergency arising from a financial breakdown.



(a) *Proclamation of Emergency in the event of war or Internal Disturbance.* If the President is satisfied that a grave emergency exists by which the security of India or any part thereof is threatened either by war or external aggression or internal disturbance, he may issue a proclamation declaring an emergency. Such a declaration can also be made even in *anticipation* of such a danger. The authority of the President in this respect is, however, subject to the control of the Union Legislature. Such a proclamation shall be laid before each House of Parliament and it shall cease to operate at the expiration of two months, subject to a maximum of three years.

*Its effect.* The proclamation of Emergency has very far-reaching constitutional consequences :

- (i) Parliament assumes the power to legislate for the entire country or any part thereof even in respect of those matters which are included in the State Legislative List. (ii) Parliament can issue directives to the States as to the manner in which they have to exercise their executive authority. (iii) The President can vest authority in Union Officers for purposes of administration of subjects normally under the charge of States. (iv) The President can suspend the financial provisions of the Constitution connected with the distribution of the sources of revenue between the union and the States. (v) The fundamental rights granted under the Constitution will remain suspended during the period of emergency proclamation, and no court will have the power to enforce the Fundamental Rights enumerated in Part III of the Constitution.

Thus, during an emergency, the federal constitution of the country is transformed into a unitary one.

(b) *Emergency arising from failure of Constitutional Machinery in States.\** If the President, on receipt of a report from the Governor of a State, is satisfied that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution, he may by a proclamation (a) assume to himself all or any of the



functions of government of the State, (b) declare that the powers of the legislature of the State shall be exercised by Parliament; (c) suspend the operation of any of the provisions of the Constitution relating to any authority in the State except the High Court; (d) suspend any part of the Constitution relating to any individual in the State; (e) authorise expenditure from the consolidated fund of the State, pending action by Parliament. ✓

This proclamation of emergency has the effect of suspending the autonomy of the State and bringing it under the direct authority of the Union. ✓

A proclamation under this Section was issued thrice, first, in June 1951 to declare the failure of the constitutional machinery in the Punjab, second to do the same in PEPSU in 1953, and, third, in Travancore-Cochin and Andhra in 1955.

(c) *Financial Emergency*. The President is empowered to issue a proclamation of financial emergency if he is satisfied that the financial stability or credit of India or of any of its territories is threatened. In such a case, he can issue necessary directions including suggestions for the reduction of salaries and allowances of public servants belonging to the Union or the States. All money bills passed by the State Legislatures are subject to the approval of the President.† ✓

The procedure and duration of emergencies in the last two cases are the same as those in the case of the first proclamation.

### **Evaluation of the Emergency Powers of the President**

The emergency powers vested in the President under Articles 352 to 360 of the Constitution, discussed above, have been assailed by a large number of critics belonging to various political parties. These opinions vary between extremes.

Critics point out that concentration of large powers in the hands of a person who is neither directly elected by the people nor is responsible to the legislature is a very dangerous experiment. "We are seeking", said Shri H. V. Kamath

\*Section 356 (1) of the Constitution.

†Section 300 (1)



in the Constituent Assembly, "to lay the foundations of a totalitarian State, a police state completely opposed to all principles that we have held aloft during the last four decades". Shri Kamath further pointed out that emergency powers were a 'plagiarised version' of the British Emergency Powers Act, 1920. Even then it was not honest plagiarism. The British Act provided that the proclamation should be laid before Parliament within five days of its issue and would cease to operate after expiration of seven days from the time it was laid before Parliament unless Parliament approved its extension. Even the Constitution of the Weimer Republic laid down that such a proclamation be submitted to the German Parliament immediately and should be revoked at the demand of the German Parliament. Under the U. S. Constitution fundamental rights of citizens can only be suspended by Congress but the Supreme Court is authorised to set aside their suspension if, in its opinion, conditions do not exist justifying their abrogation.

However, there are others who justify the retention of these powers. Shri R. K. Sidhwa strongly supported the Article holding that the President and the Central Government must be armed with all the necessary powers to deal with an emergency. Shri Alladi Krishnaswamy Ayyar, supporting the emergency provisions, said that it was not intended that the President would suspend all the fundamental rights enumerated in the Constitution. He would suspend only such rights as the emergency justified. Dr. Ambedkar, Chairman of the Drafting Committee, supporting these provisions said that in the U. S. A., although the Congress had the power to deal with constitutional guarantees including *habeas corpus*, the President of the U. S. A. possessed the interim power to suspend the writ. It was proposed to vest the Indian President with such interim powers. At the same time Parliament was also being given authority to deal with the matter.

After weighing the pros and cons of the emergency provisions, it is possible to conclude that these provisions are required in the Indian Constitution due to the peculiarities and the present exigencies of the Indian situation. The



Indian Union needs a strong Centre to safeguard itself adequately against disruptive forces generated by linguism, regionalism and communalism from within and threat to its security from without. All we can say is that the exercise of these powers should have a constitutional sanction. The Constitution does provide sufficient safeguards against the misuse of powers by the President. The Constitution establishes a parliamentary form of government in which the head of the executive is a titular head and he cannot act against the advice of the Cabinet. Again, these emergency powers are intended to be used very rarely. In case of a grave emergency, sanction for the exercise of such powers has to be secured from the Parliament which is composed of representatives of the various States. The States individually will not be able to face an external threat or internal disruption and will naturally entrust the task of tiding over the emergency to the Central Government. The experience of the exercise of emergency powers by the President during the constitutional crises in the Punjab, PEPSU and Andhra goes to substantiate the truth that such exercise was needed in the interest of stability of administration in the various States. As soon as this end was secured, the proclamation of emergency was revoked.

#### **Comparison of the Indian President with the American President**

It may be desirable to compare the President of India with the American President.

“The title of this functionary”, says Dr. B. R. Ambedkar, “reminds one of the President of the United States. But beyond identity of names there is nothing in common between the form of government prevalent in America and the form of government in India”. This is substantially true.

*Points of Similarity.* The points of similarity between the two are superficial. Both of them are indirectly elected by an electoral college for a fixed term before the expiration of which they cannot be removed except by impeachment for violation of the Constitution. The Presidential electors in America are expressly debarred from membership of Congress, but in India elected members of both Houses of Parliament and of the Legislative Assemblies of the State



constitute the electoral college for electing the President. Both of them are eligible for re-election to the office, although there is an express constitutional limitation that no American President can serve for more than two terms.\*

#### Differences between the Powers of the American and Indian President

The American President is the real head of the executive and is constitutionally independent of the Congress. Members of the American Cabinet are answerable to him and not to the Congress. The American President has the power of determining the policy of the Government independently of the Cabinet. In the words of Harold Laski, "Alongside his, the voice of a Cabinet officer is, at best, a whisper, which may or may not be heard". The Indian President is a titular head and by a well-established convention of parliamentary form of government is bound to act on the advice of the Cabinet which is the real executive.

The American President appoints and dismisses members of his Cabinet in his discretion. The President of India has no power to dismiss the Prime Minister or his ministers so long as they enjoy the confidence of the House of the People.

The Indian President has ostensibly an impressive list of powers which at least on paper appear to be more formidable than those enjoyed by the American President. However, Article 74 of the Constitution requires 'the Council of Ministers with the Prime Minister at the head to aid and advise the President in the *exercise of his functions*.' This effectively introduces the principle of responsible government and makes the Indian President a constitutional head, far less powerful than the American President. The Indian President dare not ignore the advice of his ministers in the normal exercise of his powers. If he does not act according to their advice, the Cabinet as a protest will quit office and it will not be easy for the President to resolve the constitutional deadlock without dissolving the Lower House and holding fresh elections. If the same parties are re-elected at the next elections, it will be a clear judgment of

\*22nd Amendment.



the people against him. The President will think twice before resorting to such a hazardous course of action.

### **The French President and the Indian President**

The Indian President has also been compared to the French President.

Both of them are heads of a parliamentary form of executive. Both of them are indirectly elected. In the case of the French President, the electoral college consists of the two Houses of the French Parliament. The President of India is elected by an electoral college consisting of the elected members of both Houses of Parliament and of the Legislative Assemblies of States. Both of them have a fixed term of office. The Indian President is elected for five years, but the President of France has a seven-year term. The Indian President is eligible for re-election but the French President cannot seek re-election after having served his term of office. ✓

Both the high dignitaries are liable to be impeached for high treason. In the case of the French President, the impeachment charge is to be initiated by the National Assembly and the trial is to be conducted by the High Court of Justice elected by Parliament every year at the beginning of the session. In the case of the Indian President, each House may prefer a charge and the other House may proceed with the trial. Although both of them are constitutional heads, the Indian President's position is more exalted than that of his counterpart in France. The French Constitution lays down that the acts of the President shall be countersigned by a particular Minister. There is no such legal provision in the case of the Indian President which may bind his discretion in the matter of accepting the advice of the Cabinet.

The French President is nothing more than a figure-head, 'a prisoner in an iron cage'. The French Constitution does not vest in the President even formal powers as the head of the administration. The Indian President's office is one of great dignity and authority. In the words of Prime Minister Nehru, "We want to emphasise the ministerial character of the government that power really resided in the Ministry



and in the Legislature and not in the President as such. At the same time, we do not want to make the President a mere figure-head like the French President. We have not given him any real power but we have made his position one of great authority and dignity'.

### **The Real Strength of the President**

The absence of an express provision in the Constitution to compel the President of India to act according to the advice of the Ministers has led critics to argue that the President, if he so chooses, can become a real ruler and not a mere nominal executive head of the Union. 'It is possible to contend,' says Gledhill, 'that the Constitution does not sufficiently guard against the President becoming a dictator'\*. Gledhill has taken an interesting hypothetical case of a President who is determined to become a dictator. The President may issue the Proclamation of Emergency for a period of two months, without going to Parliament for its ratification, may suspend fundamental rights and become a dictator. Similar provisions existed in the Weimer Constitution of Germany and by misusing them Hitler built up his supreme authority and destroyed democracy in his country. It is argued that on a similar basis the President can legally assume dictatorial authority, though, according to the spirit of the Constitution and parliamentary conventions, he is to play the role of a constitutional head. "Time alone will show", remarks Gledhill, "the extent to which the personal views of the President will prevail in the exercise of his functions". Much has been left to conventions which are yet to grow in this country.

*Conclusion.* This is too legalistic a view of the whole thing. The assumptions made by Gledhill that there is great scope for an unscrupulous President to switch on from constitutional machinery to despotism are too far-fetched. Article 53 (1) of our Constitution clearly lays down that the executive power of the Union shall be vested in the President and shall be exercised by him in accordance with the Constitution.' This Article should be read with another Article 74 (1), which lays down that 'there shall be a Council

\*Alan Gledhill, *The Republic of India*, pp. 107-108.



of Ministers to aid and advise the President in the *exercise of his functions*.' These provisions fairly establish Dr. Ambedkar's contention that the Constitution establishes a British pattern of parliamentary government in India and that the President is normally bound by the advice of his Council of Ministers. The Council of Ministers holds office not during the pleasure of the President but because of the confidence of Parliament which it enjoys. If the President does not act on the advice of the Council of Ministers, the latter can tender resignation and the President will have to form another ministry enjoying the confidence of the Lower House. The President may face the threat of impeachment for not exercising his functions in accordance with the Constitution. Normally, the President will not reject the advice of the ministry, because it is his fundamental duty to secure ministry collectively responsible to the House of the People.

In fact, the role the President is akin to the one exercised by the British monarch. The President has no constitutional right to preside over the meetings of the Cabinet. The emergency powers to be exercised by the President are subject to parliamentary sanction and are exercised to protect and defend the Constitution and in the interests of the well-being of the people. The authors of the Constitution deliberately refrained from incorporating in the Constitution the proviso that the advice of the Council of Ministers will be binding on the President. This would have reduced the Indian President to the position of a mere figure-head like the French President, whose every act is to be countersigned by a Minister and also by the Prime Minister. The Indian President holds an office which carries great dignity and prestige. Like the British sovereign, he has three rights—'the right to be consulted, the right to encourage, the right to warn.' But he does not attend the meetings of the Council of Ministers, but the Prime Minister is required by the Constitution to keep him informed of all the decisions of the Cabinet. The President may also call upon the Cabinet to reconsider any matter on which a decision has been taken by an individual minister and which has not been considered by the Cabinet.

The President is a critic, adviser and friend of the



Ministers. By the force of his personality and character he may wield a great influence on the administration. If he is a man of outstanding ability and possesses tact and administrative experience, there is no reason why his counsels will not prevail with his Ministers. Very much also depends on the personal equation between the President and the Prime Minister. If the former is strong and able and the latter weak and indeterminate, the President will dominate the administration. Under reverse conditions, the opposite may hold true. However, there are circumstances in which the President may exercise a decisive weight in the administration. If there are more than two political parties in the House of the People and none of them enjoys a clear majority, then the President may exercise his discretion in the selection of the Prime Minister and through a wise choice assume authority in his hands. The position of the President of India may be summed up in the following words of Dr. Ambedkar: "The President occupies the same position as the king under the English Constitution. He is the head of the State but not the Head of the Executive. He represents the Nation, but does not rule the Nation. His place in the administration is that of a ceremonial device or seal by which the nation's decisions are made known. He will be generally bound by the advice of the Ministers. He can do nothing contrary to their advice, nor can he do anything without their advice."

#### THE VICE-PRESIDENT

The Indian Constitution makes provision of a Vice-President also who is to act as ex-officio Chairman of the Council of States. He can step in and officiate as President for a short duration only, when the office of the President falls vacant due to the latter's illness, resignation, removal or death. In the U. S. A., the Vice-President automatically becomes the President in case a vacancy occurs due to resignation or death of the President and he serves the remaining period of the tenure of his predecessor. It is not so in India, as the Constitution provides that elections to the office of the President must be held within six months of the date on which the vacancy occurs. The Vice-President holds office for five years. He can be removed from office by a



resolution of the Council of States passed by an absolute majority of votes and agreed to by the House of the People.

*Election.* He is elected at a joint meeting of both the Houses of Parliament according to the system of proportional representation and the single transferable vote. A person contesting the seat of Vice-President must be a citizen of India of at least 35 years of age and must be qualified for membership of the Council of States.

### Select Bibliography

*Gledhill, A.* : The Republic of India, pp. 98-108

Constituent Assembly Proceedings, Vol. IV, IIV and XI.

*Subdimal, Mukerji* : Our President The Indian Leviathan :  
Uttarayan Ltd. Calcutta.

*D. D. Basu* : Commentary on the Constitution of India, pp. 247-308 ; & 794-81.

Representation of the People (Conduct of Election and Election Petition) Rules, 1951-



## CHAPTER 20

### THE UNION COUNCIL OF MINISTERS

The Indian Constitution establishes a parliamentary form of government patterned on the British model. The Constitution nowhere mentions the word 'Cabinet'. It provides for a Council of Ministers headed by the Prime Minister to aid and advise the President in the exercise of his functions.\* The Council of Ministers forms the pivot round which the entire machinery of the government revolves.

#### **Basic Principles on which Cabinet Government works**

The Cabinet is a body of men selected from among the leaders of the majority party or parties in the Legislature. They remain in office so long as they enjoy the confidence of the Lower House of Parliament.

*Political Homogeneity.* The first feature of a Cabinet is its political homogeneity. All the ministers hold similar views on vital matters of policy and they are all agreed on a common programme in the execution of which they co-operate with one another. The ideal Cabinet is one in which all members are drawn from a single political party. In the case of coalition Cabinets also its various members agree on a common programme of action.

*Ministerial Responsibility.* The second feature of the Cabinet is its responsibility to the Lower House of Parliament. It is responsible in two senses : (i) Every minister is responsible individually for the work of his department ; (ii) The ministers are collectively responsible as a body for the general policy of the Government. Mr. Dalton, one of the ablest Chancellors of Exchequer in England, was compelled to resign forthwith in November 1947, for indiscreetly leaking out the contents of his budget to a parliamentary journalist in the lobby of the house prior to his budget speech. Such a case is an instance of the individual

---

\*Article 74.



responsibility of a minister. Collective responsibility means that all matters of policy shall be the affair of the Cabinet and not of individual ministers. In the inner councils of the Cabinet, the individual members may differ in their views upon particular measures, but such differences are reconciled in the Cabinet itself. An individual minister must accept the decision of the majority or he must resign. Anthony Eden had to resign from the Foreign Affairs Ministership in 1938, because he differed with his Prime Minister, Mr. Neville Chamberlain, on the Italian issue. The Cabinet as a body will resign if its essential policy is rejected by a frontal attack in the Commons. Even if a motion of censure is passed against a particular minister, the whole cabinet will resign on the presumption that the official action of the minister has Cabinet support. All ministers sink or swim together.

The joint responsibility of the Cabinet to the Lower House of Parliament in England and the Dominions is based not on written law but on convention. In India, however, it is expressly provided for in Article 75 (3) of the Constitution. The Indian Constitution follows in this respect the Irish and the French models. The Union Cabinet of India has worked on the principle of collective responsibility. Dr. John Matthai, Dr. Shyama Prasad Mukerjee, Shri K. C. Niyogi, Dr. B. R. Ambedkar and Shri C. D. Deshmukh did not share the views of the Union Cabinet on vital issues of policy and so vacated their offices.

*Leadership of the Prime Minister.* The third feature of the Cabinet system is the leadership of the Prime Minister. In England the office of Prime Minister has evolved, whereas in India it is created. The Constitution of India recognizes his pre-eminent position when it says 'there shall be a Council of Ministers with the Prime Minister at the head'.\* The Prime Minister is the keystone of the Cabinet arch, the keystone of the Constitution and the linchpin of the Government. He is the leader of the majority party in the Lower House. He is the embodiment of the highest political power in the State. He is not only a connecting link between

\* Article 74 (1).



Parliament and the Crown or the President but also between the Cabinet and Parliament. It is through him that the collective responsibility of the Cabinet is enforced. It is secured in two ways—through the appointment of other ministers by the crown or President upon his advice, and through his power to demand resignation from a non-co-operating minister. If the Prime Minister resigns, “the entire ministry loses its *raison de’etre* and falls like a pack of cards”.

*Close Harmony of the Cabinet with Parliament.* The fourth feature of the Cabinet Government is its close collaboration with the Legislature. The members of the Cabinet not only enjoy political leadership but are leaders of the majority party in the Legislature. They initiate legislation, pilot bills, and participate in the government. The Cabinet thus exercises a dominant control over the Legislature. ✓

*Secrecy of Proceedings of the Cabinet.* Another feature of the Cabinet is the secrecy of its proceedings. This is safeguarded both by law and convention. Every minister is required to take the oath of secrecy before he enters upon his office.\* Secrecy is necessary because it helps to produce political unanimity. ✓

The Official Secrets Act forbids the publication of Cabinet proceedings as well as other official documents. The theoretical basis of the practice is that a Cabinet decision is an advice to the head of State and it cannot be published without his consent. “Its practical foundation is the necessity of securing free discussion by which a compromise can be reached, without the risk of publicity for every statement made and every point given away”.†

The practical utility of Cabinet secrecy in a modern democratic set-up has been aptly described by Herman Finer in the following words :

“...To disclose what happens at the cabinet is inevitably to disclose differences among its members : to do that is to give the opposition the opportunity of playing upon those differences, and inevitably to cause a breakdown of united responsibility and to encourage mutual recrimination

\*Article 75 (4).

† Ivor Jennings : *Cabinet Government* (Cambridge, 1951).



and individual reticence and distrust among ministers. Finally, publicity must reduce the independence of mind of ministers in relation to each other, and, by exposing them to the intervention of public opinion, reduce their mature, rational, independent contribution to the process of policy making."

An occasion when secrecy of cabinet proceedings is usually threatened arises when a resigning minister desires to offer an explanation in Parliament. According to the practice in the U. K., the minister concerned has to secure the King's permission through the Prime Minister to make such a statement. The permission thus granted relates usually to that particular occasion and it is not open to a resigning minister to return to the same subject again. An interesting precedent on the subject arose when Lord Derby, one of the ministers of Queen Victoria, resigned in 1845 over Corn Laws and was permitted to state his reasons in Parliament. But, when four months later he returned to the same subject, the Queen described this as "most unusual." In reply to Lord Derby's explanation, General Ponsonby wrote on behalf of the Queen:

"Her Majesty expects that whenever a Privy Councillor makes any statement in Parliament respecting proceedings in Her Majesty's Council, the Queen's permission to do so should first be solicited and the object of the statement made clear and that the permission thus given should only serve for the particular instance, and not considered as an open licence."

Thus, although leakages have occasionally occurred, the rules of secrecy have in the main been admirably preserved. Of course, at a certain point Cabinet proceedings pass into history. For example, people are no longer in much doubt about what passed in the 19th century cabinets, as most of the details are now available in the published memoirs and biographies of eminent statesmen who headed the cabinets during that century. Even in the present century, eminent individuals like Lloyd George and Winston Churchill seem to have been granted generous latitude in the publication of Cabinet memoranda in their memoirs. In general, however, the rule of secrecy has been well observed and at any



given time the public are less well informed about the operations of the Cabinet than about most other parts of the machinery of government.

*Methods of keeping Secrecy.* By far the most effective safeguard against divulgence of secrets is provided by the well-defined procedure governing the actual conduct of business in the Cabinet and the preparation, circulation and reservation of important papers connected with its discussions. Attendance at Cabinet meetings is strictly confined to the ministers. No outsider except the Secretary of the Cabinet, who is present to take down minutes of the meetings, is permitted to be present. Special care is taken to ensure the secrecy of these minutes. Only the minimum staff is employed on their reproduction.

*Exclusion of the President.* The last feature of the Cabinet is that the President does not preside over the deliberations of the Cabinet. This ensures the neutrality of the President and places him above party politics. The position of the President in India is analogous to that of the British sovereign who can do no wrong. This means ministers, and not the King or President, are responsible for the policy of the State and the acts done in pursuance of that policy.

#### Composition of the Council of Ministers

The Constitution speaks of the Council of Ministers and not the 'Cabinet'. The Cabinet is a part of the Council of Ministers, a part of bigger whole, of a wheel within a wheel. All the ministers in England do not enjoy Cabinet rank. The number of those who are admitted to that rank is in the neighbourhood of twenty or twenty-four. Vital questions of policy are decided by the Cabinet and in these matters ministers without Cabinet rank are not consulted. In India also a distinction between ministers has been maintained on the basis of their status, rank and position. There are at present three classes of ministers--Cabinet Ministers, Ministers of State and Deputy Ministers. The Cabinet Ministers in India are at present fifteen in number. They hold important portfolios, attend the meetings of the Cabinet and receive a salary of Rs. 2,250 per mensem, a free residential accommodation and a sumptuary allowance of Rs. 500 per month.



The second category consists of Ministers of State. (For some time they were also called Ministers of Cabinet rank but not members of the Cabinet). They do not attend the meetings of the Cabinet except when they are invited by special request to discuss some matter relating to their department. They receive a free house, Rs. 2,250 per mensem as salary but no sumptuary allowance. They are at present 12 in number. The third category consists of Deputy Ministers, who at present number 15 and get a salary of Rs. 1,750 per mensem without any free residence or sumptuary allowance. The function of Deputy Ministers is to relieve heavily-burdened departmental ministers of their work. They assist the ministers in their administrative and parliamentary work. The Constitution does not fix the number of ministers; it is up to the Prime Minister to determine the number and he does so to suit the requirements of efficient administration.

Nowadays there is a tendency to increase the number of ministers. It is said that the ideal size of a Cabinet is five. Five members are easy to collect. They can act with secrecy, competence and speed. But cabinets everywhere are subject to the law of growth. More members are admitted to cabinets, some because of their special knowledge of certain subjects and some because of their nuisance value when excluded. The bigger size of cabinets has led to the formation of 'cabinets within cabinets', so that ultimately power really vests in a closed group of 4 or 5 persons, who enjoy the confidence of the Prime Minister. The rest of the members just play a subsidiary role.

#### Functions of the Cabinet

The functions of the cabinet have been defined by Lord Haldane as being three in number :—

Firstly, it determines the general policy of the Government, subject to the approval of Parliament. It formulates policies, makes decisions and drafts bills on all vital matters and seeks parliamentary sanction.

Secondly, it exercises supreme control on the national executive in accordance with the policy prescribed by Parliament. Thus, it exercises control over the entire administration of the country. Each minister is in charge of one or



more departments of administration. The Cabinet collectively constitutes the Government of the country. In carrying out the work of their departments, individual ministers act according to the directions of the Cabinet. The Cabinet's authority has been reinforced through the exercise of the power of delegated legislation. Legislation during modern times has become voluminous and complicated. Parliament consists of laymen and so it lays down only general principles and passes laws in a skeleton form. It delegates powers to Ministers in charge of various departments to fill in the details and make rules and regulations to enforce laws.

Thirdly, it co-ordinates the working of the various departments of the State. This is necessary to secure harmony and co-operation among the various departments of government.

The cabinet exercises two more functions : (1) control over national finances and (2) power over all important appointments.

#### **Working of the Cabinet**

The work of administration in India is divided into a number of portfolios or departments. These are (1) External Affairs (including Commonwealth Relations); (2) Home; (3) Defence; (4) Food and Agriculture; (5) Works, Housing and Supply; (6) Education; (7) Natural Resources and Scientific Research; (8) Finance; (9) Labour; (10) Planning, Irrigation and Power; (11) Commerce and Industry; (12) Health; (13) Communications; (14) Law; (15) Production; (16) Transport; (17) Railways; (18) Information & Broadcasting; (19) Iron & Steel; (20) Rehabilitation; (21) Parliamentary Affairs.

#### **Cabinet within the Cabinet**

Within the cabinet there develops an 'inner cabinet', which consists of the Prime Minister and two or three trusted ministers who take decisions on crucial matters. These tentative decisions are endorsed by the cabinet. In India such a body exists in the shape of the Economic Committee and the Defence Committee of the Cabinet. Three or four important ministers are members of this body.



**Cabinet Secretariat**

The cabinet has a Secretary whose duty is to prepare the agenda of the meeting and to record the decisions of the cabinet. Copies of the minutes are supplied to all cabinet ministers and where decisions are taken concerning departments, extracts of the report are circulated to the ministers in charge of them.

**The Council of Ministers and the House of the People**

The relationship subsisting between the Council of Ministers and the House of People is one of natural interdependence. The former are legally and constitutionally responsible to the Legislature for their acts and omissions. The House of the People can call them to account through questions, resolutions and adjournment motions. The ministers, through interpellations, can be called upon to supply to the House information on matters of public interest and to defend the policy of the administration. They cease to hold office the moment they lose the confidence of the House. It would thus appear that the Council of Ministers is subservient to the House of the People and holds office during its pleasure. In actual practice the reverse holds true. Members of the Cabinet are leaders of the majority party in the Legislature and as such are assured of party support and loyalty. Members of the party are tied down by party discipline to obey party leadership. As party leaders are heads of administration, the members of the cabinet exercise virtual authority over the Legislature. They introduce all public bills and pilot them in the Legislature. They control the national finances. They exercise all powers of summoning, proroguing and dissolving the House of the People in the name of the President.

The above system applies only to those countries where the two-party system prevails and where one of the parties commands a stable majority in the Legislature. It does not apply to continental countries where there is multiplicity of parties and cabinets are unstable. In France, the National Assembly is supreme and Cabinets exist on its sufferance. In India, the Indian National Congress commands an overwhelming majority in the Union and State Legislature. There-



fore, the Union Cabinet is able to dominate the House of the People in a far greater measure than does the British Cabinet in the House of Commons. But all this does not mean that the Cabinet can ignore altogether the wishes of the House of the People. It is subject to constant criticism by the House of the People and it can do nothing to provoke the hostility of the latter.

### The Council of Ministers and the President

In legal and constitutional theory the President appoints the ministers who hold office during the pleasure of the latter. In actual practice, the Council of Ministers holds office independently of the President so long as it continues to enjoy the confidence and support of the Lower House. In legal theory the executive authority of the realm is vested in the President, who exercises his power with the aid and advice of the Ministers; in actual practice the Council of Ministers wields the real authority and power and exercises the same in the name of the President.

The Council of Ministers enjoys the freedom to deliberate in its meetings and the President is excluded from such discussions. The President, however, does enjoy like the British sovereign four-fold powers—the right to be informed, the right to advise, the right to encourage, and the right to warn the Cabinet. He is to be kept informed by the Prime Minister of all decisions made by the cabinet. He can refer any decision made by a minister for the consideration of the cabinet if it has not been placed before it earlier. It has already been explained that the President of the Indian Union enjoys the residue of discretionary authority which he may exercise in very abnormal circumstances to protect and defend the Constitution, *i. e.*, the President may refuse to dissolve the House when so demanded by the Cabinet improperly.

### THE PRIME MINISTER

We have said before that the Prime Minister is the keystone of the Cabinet arch. He heads the Council of Ministers and is the channel of communication between the Cabinet and the President.



*Appointment.* The Constitution provides that the President shall appoint the Prime Minister. In actual practice, the choice of the President is limited, for he has to select a person who is the leader of the party or group commanding a majority in the House of the People. There is no legal bar to the appointment of a member of the Upper House as Prime Minister both in England and in India. In actual practice, however, this is not done since the Prime Minister has to carry the majority party in the House of the People with him. The President can exercise discretion in the appointment of the Prime Minister only if there is multiplicity of political parties and no single party commands a majority in the Lower House.

#### Functions of the Prime Minister

The functions of the Prime Minister can be divided under the following heads :

(1) *Constituting the Cabinet.* The President appoints ministers on the advice of the Prime Minister. The power of appointment of ministers by the President is only formal, for in actual practice the selection is made by the Prime Minister. In England, the latter exercises unrestricted authority in selecting his colleagues.\* In India he has to give due regard to other considerations, e. g., regional and communal representation. Nevertheless, he determines the size of his cabinet and can increase or reduce the number of ministers. He exercises full discretion in the distribution of portfolios among his colleagues. He can reshuffle the cabinet from time to time to secure efficiency in the administration.

(2) *Presiding over the Cabinet.* The Prime Minister is the chairman of the cabinet. As such, he is the most important link between the cabinet and Parliament. He is the guardian of the principle of collective responsibility—the essence of the cabinet system of Government. He presides over cabinet meetings and determines what business shall be carried out in these meetings. He adjusts differences arising among ministers or different Departments.

(3) *Co-ordination of Work.* The Prime Minister co-ordinates the work of the various ministries and exercises general



supervision and control over the work of the various departments of the Government.

(4) *Leadership of the House of the People.* As leader of the House of the People, the Prime Minister assumes responsibility of making all important pronouncements regarding policy affairs. Questions on non-departmental affairs and other critical issues are addressed to him as leader of the House. He is recognised to have immediate authority to correct what he considers to be errors inferable from any of his colleague's statements, whether in or out of the House. As leader of the House, he is looked up to "as the ultimate oracle in the matters of doubt when ministers do not give the House satisfaction, and as the fountain of policy." He is also the guardian of the rights and privileges of the House as a whole and its members individually irrespective of their party affiliations.

He arranges the business of Parliament with the Chief Whip, settles procedure and the distribution of time with the Opposition and gives assistance to the Speaker and the Chairman in the maintenance of order and decorum.

(5) *Appointments.* The Prime Minister enjoys the power to approve the appointment of Secretaries of Ministries and other heads of independent departments. The appointment of Governors, Chief Commissioners, Ambassadors, India's representatives at international conferences and on goodwill missions abroad are approved by him.

(6) *Link between the Cabinet and the President.* The Prime Minister keeps the President informed of the decisions of the cabinet. He is the chief adviser of the President and the latter exercises his emergency powers only after consulting him. Although other Ministers have also a right of access to the President on all matters of vital public concern, he is the chief channel of communication with the President.

### **Role of the Prime Minister**

It would thus appear that the Prime Minister of India exercises a pre-eminent role in the governance of the State. He is the keystone of the Cabinet arch, 'central to its formation, central to its life and central to its death.' He is the



head of the Government, and the head of the State cannot function without his advice. ✓

### Prime Minister and His Colleagues

But from what has been said above, it should not be concluded that the Prime Minister can afford to adopt an arbitrary attitude towards his colleagues in the cabinet, either collectively or individually. In fact, a Prime Minister, if he at all understands the real interest of the country which has placed the highest political power into his hands, will always endeavour to keep solid with his colleagues. The party has cemented them together as a multiple but a corporate executive. Mr. Herbert Morrison in his publication, *Government and Parliament*, gives the following assessment of the position of the British Prime Minister *vis-a-vis* his cabinet colleagues. This assessment holds equally true of India :

“He is not the master of the Cabinet. Perhaps the habit of referring to Prime Minister’s directives across the Floor of the House of Commons or asking the Prime Minister to direct one or more of his colleagues to do this or that has been overdone. It is right, and indeed in most cases inevitable, that the Prime Minister should have a special authority; if for no other reason it is bound to emerge because of the fact that he recommends to the Sovereign the appointment of Ministers and can ask for resignations. He is the leader of the Government, but (except on occasions of emergency) he ought not to, and usually does not, presume to give directions or decisions which are proper to the cabinet or one of its committees, even though his position is rightly one of special authority and Parliament and the country quite properly look to him for leadership and inspiration”.

### Can the Prime Minister act without Cabinet Approval ?

Whether a Prime Minister can sometimes take decisions without the prior approval of the cabinet is a debatable point. Britain has had a number of precedents which show that this has not been a very unusual practice. In 1850, Lord John Russell wrote his famous letter, denouncing the new Catholic hierarchy without consulting his cabinet, but it bound the rest of his colleagues to acceptance of a Bill which



many of them did not like. Mr. Gladstone ran counter to a previous cabinet decision when he accepted a motion for a Committee of Enquiry on the "Kilmainham Treaty" in 1882. When trade unions were exempted from liability for torts, and domestic servants were included within the Workmen's Compensation Bill, it was a personal decision of the Prime Minister, Sir Henry Campbell-Bannerman (1905-8). In respect of the former he reversed a decision of the Cabinet; in respect of the latter he decided against the publicly expressed intentions of the minister in charge of the Bill. In more recent times, Mr. Asquith's statement of the Government's intention to introduce adult suffrage (1916), Mr. Lloyd George's decision to summon the Imperial War Conference (1916), and Mr. Neville Chamberlain's telegram to Hitler (1938) are instances of the same category. The position has been aptly put by Sir Ivor Jennings in his *Cabinet Government* (1951) in the following words :

"New policies are, in theory, the concern of the Cabinet. But the Prime Minister can, within limits, compel the acceptance of policies by announcing them publicly. The Cabinet then has either to accept the policy or lose its leader. Frequently, the first is the better alternative."

#### Comparison with the British Prime Minister

The position of the Prime Minister of India is analogous to that of the British Prime Minister. In the words of Jennings, 'he is not merely *primus inter pares* (the first among equals), but the 'sun around which the planets revolve'.\*

The only difference between the two dignitaries is that while the British Prime Minister is a product of convention, the office of the Indian Prime Minister is a product of statute. In England the principle of ministerial responsibility is based on long-established usage. In India it has a legal and constitutional basis.

Both the functionaries are vested with tremendous powers. In the words of Ramsay Muir, the British Prime Minister is, in fact, though not in law, the working head of the State, endowed with such a plenitude of power as no

\**Cabinet Government*, p. 183.



other constitutional ruler in the world, not even the President of the United States possesses.\* This statement is equally applicable to the Indian Prime Minister. Like his British compeer he is the pivot of the whole system of Government and has a decisive voice in all matters of policy, decisions and appointments.

The French Prime Minister compares unfavourably with the Indian Prime Minister. The former has no authority over his colleagues in the coalition cabinet, and 'cannot shuffle his pack as he pleases.' He has constantly to humour and flatter them to win their co-operation. The Indian Prime Minister can appoint and dismiss his colleagues. He exercises the wide powers vested in the Centre including the Emergency powers of the President in the latter's name.

But the office of the Prime Minister 'is what the holder chooses to make it', as Jennings says. His position in the cabinet depends on a number of factors, *viz.*, the personality of the man himself, the support that he enjoys among his cabinet colleagues, the status and influence of the other members of cabinet, the strength of his party in Parliament and the country, and the political conditions of the time. Given a solid party backing and confidence among party leaders, a Prime Minister can wield unusual authority. Our present Prime Minister of India, Pandit Nehru, satisfies all these conditions in an extraordinary measure. With his dynamic personality and drive, he has left a great impress on his office and raised its prestige to a towering height. As leader of the majority party in Parliament and national hero, 'he leads the cabinet, the Parliament and the nation'. He has steered the ship of the State safely and courageously. He has championed the cause of the oppressed and is striving for international peace and amity. His doctrine of *Panch Shila*, *i.e.*, of peaceful co-existence has gained worldwide appreciation. The secret of his power lies in his great hold on the Congress Party and on the masses.

#### **Attorney-General of India**

The Constitution provides for an Attorney-General of India to offer legal advice to the Union Government. He

\*How Britain is Governed, p. 83.



is appointed by the President. Only a person qualified to become a Judge of the Supreme Court is eligible for appointment as Attorney-General.

He can be dismissed from office by the President. The latter fixes his salary and allowances. The Constitution grants him the right of audience in all courts in India. The office of the Attorney-General is considered to be a political one. It is, therefore, necessary that he should not only be an expert on law, but also be able to interpret the policy of the ruling party in the Government.

### Selected Bibliography

*Herman Finer* : Theory and Practice of Modern Government  
pp. 575-621.

*Laski* : Parliamentary Government in England, Chapter V.

*Jennings* : Cabinet Government.

*Keith* : The British Cabinet System.

*D. D. Basu* : Commentary on Indian Constitution, pp. 308-399.



## CHAPTER 21

### PARLIAMENT : ITS ORGANIZATION AND FUNCTIONS

#### Parliament

The Union Legislature is known as Parliament. It is constituted on the principle of bicameralism, having two houses known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). The Indian Constitution follows the British system in associating the head of the State with the Legislature. The President of India, like the King or Queen of England, is a constituent part of Parliament. This differs from the system prevalent in the U. S. A. or in the U. S. S. R. In the United States all legislative powers granted to the Centre are vested in Congress, consisting of the Senate and the House of Representatives.\* In the U. S. S. R. also all legislative powers are exclusively exercised by the Supreme Soviet.†

#### Composition

The House of the People represents the people and is directly elected by the people on the basis of adult franchise and territorial constituencies. The Council of States represents the States and consists of the representatives of the States elected by the State Assemblies. ✓

#### The House of the People

The membership of the House of the People is limited by the Constitution to a maximum of 500. The strength of the chamber is not unwieldy as compared to the British House of Commons and the French National Assembly, which have a membership of 625 and 627 respectively. The ratio between the number of members allotted to each territorial constituency and its population is kept uniform throughout India but after each census there is to be a re-adjustment of such representation. The Constitution provides for reservation of seats, on population basis, for the scheduled castes and scheduled tribes for a period of ten years from

---

\*Article 1 Sec. 1

†Article 36.



the date of the commencement of Constitution. The President may also nominate not more than two representatives of the Anglo-Indians to the House if he thinks that the community is not adequately represented.

*Present Strength.* Before the Reorganisation of States, the actual strength of the House of the People was fixed at 499. After November 1, 1956 it has been fixed at 500, as follows:

*Composition of the House of the People*

	Number of Seats		
	Total	Scheduled Castes	Scheduled Tribes
<b>STATES</b>			
Andhra Pradesh	43	6	2
Assam	12	1	2
Bihar	53	7	5
Bombay	66	7	5
Kerala	18	2	Nil
Madhya Pradesh	36	5	7
Madras	41	7	Nil
Mysore	26	3	Nil
Orissa	20	4	4
Punjab	22	5	Nil
Rajasthan	22	3	2
Uttar Pradesh	86	18	Nil
West Bengal	36	6	2
Jammu & Kashmir	6	Nil	Nil
<b>Total</b>	<b>487</b>	<b>74</b>	<b>29</b>
<b>UNION TERRITORIES</b>			
Delhi	5	1	Nil
Himachal Pradesh	4	1	Nil
Manipur	2	Nil	1
Tripura	2	Nil	1
<b>Total</b>	<b>13</b>	<b>2</b>	<b>2</b>
<b>GRAND TOTAL</b>	<b>500</b>	<b>76</b>	<b>31</b>



*Qualification for Membership.* A candidate for membership of the House of the People must be an Indian citizen and not less than 25 years of age (Article 84). A person is disqualified from being a member of the House of the People if he (a) holds an office of profit under any Government in India, (b) is of unsound mind, (c) voluntarily acquires citizenship in a foreign State, (d) is found guilty of election offence, (e) has been convicted for a criminal offence for not less than two years unless five years have elapsed since his release, (f) has failed to file the return of his election expenses unless five years have elapsed from the date when the return was due; (g) is a Government contractor or licence-holder; (h) has been dismissed from Government service for corruption or disloyalty to the State.

*Tenure.* The normal life of the House of the People is five years, unless it is dissolved earlier by the President. Its life can be extended while a Proclamation of emergency is in operation for a period of one year at a time but in no case for more than six months after the Proclamation of Emergency has ceased to operate.

*Sessions.* The Constitution provides that the House shall meet at least twice a year and a period of more than six months shall not elapse between the last sitting in one session and the first sitting in the other. The quorum required for the meeting has been fixed at ten per cent of the total membership of each House.

### **Elections and Delimitation of Constituencies**

Every adult citizen of India who is not less than 21 years of age and is not otherwise disqualified from being a voter on the grounds of non-residence, unsoundness of mind, crime, bankruptcy, corrupt or illegal practices is entitled to vote. There is one common electoral roll for elections to the House of the People and the State legislatures. No one may be denied the franchise on the ground of religion, race, caste or sex. India has followed the British system of single-member constituencies, but there are a few plural-member constituencies also for electing the Scheduled Castes and the Scheduled Tribes candidates for whom seats are reserved on a population basis. The superintendence, direction and



control of all matters pertaining to election has been placed in the hands of the Election Commission appointed by the President, subject to the provisions of law made by Parliament. The Commission consists of a Chief Election Commissioner and such other members as the President may fix. It is the duty of the Commission to make necessary adjustments in the parliamentary constituencies.

In delimiting constituencies the area of each constituency, the number of seats allotted thereto and the number of seats, if any, reserved for the Scheduled Castes or the Scheduled Tribes in each constituency are determined. A person may be at the same time a voter for the House of the People, for the State Assembly and for a local body, but he cannot be registered in the electoral roll for more than one constituency of the same class. Disputes arising out of the elections can be settled only by tribunals appointed by the Election Commission. The decision of the tribunal is final, but the Supreme Court can by its special leave hear appeals against its judgment.

### **Dignitaries of Parliament**

The Constitution provides that there shall be a Chairman and a Deputy Chairman of the Council of States and a Speaker and a Deputy Speaker of the House of the People.

The Council of States is presided over by the Vice-President of the Indian Union. The Council of States also elects a Deputy Chairman who officiates for the Vice-President during this absence. The members of the House of the People elect the Speaker and the Deputy Speaker. The latter performs the duties of a presiding officer of the House during the absence of the former. These officers are liable to be removed if a resolution of no-confidence is passed against them by a majority of the members present.

### **The Speaker of the House of the People**

The position of the Speaker of the House of the People is one of great authority and dignity. He is the principal spokesman of the House and represents its collective voice. He is a link between the House and the Chief Executive. He



maintains dignity and decorum in the House, regulates debates and decides all questions of order. He is protector of the rights of the minority parties. He interprets the Constitution and the Rules of Procedure, and his decision on all points of order is final.

#### **Comparison with the Speaker of the British House of Commons**

The evolution of Indian speakership has been modelled on the British precedent and not on that of the American and continental countries. The British Speaker is noted for his impartiality and non-partisanship. His constituency is not contested by the Opposition Party when a general election comes and he is unanimously re-elected as long as he wishes to serve. On election to speakership, he severs his connections with political parties and clubs. He does not take part in debates and exercises his casting vote to maintain the *status quo*. The Speaker of the U. S. House of Representatives is a marked partisan and uses his authority and power to protect the interests of his party. The Speaker of the French National Assembly is not so crudely partisan as the Speaker of the U. S. House of Representatives, but he is not free from political affiliations. His lack of impartiality tends to diminish his authority in the House.

The Indian speakership is analogous to the British speakership, although it has not been possible to develop in this country all the traditions and conventions which characterise that venerable office. In India the first elected President of the Indian Legislative Assembly, Shri Vithalbhai Patel, established the high traditions and conventions associated with the office of the Speaker. He established such a high reputation as an independent, impartial and fearless Speaker that after the expiry of the term of his office he was re-elected unanimously to the Chair, both by the official and non-official members of the Assembly. But after his death the convention of not contesting the Speaker's constituency was not observed. Mr. Purshottam Das Tandon, who acted as Speaker of the U. P. Assembly expressed the view that India might not follow the British precedent and the Speaker may not sever his party affiliations outside the House. Shri. G. V. Mavalankar, who was Speaker of the Lok Sabha for several years, also was of opinion that it was



not possible for the Speaker in India to remain altogether out of the political arena, as in England. It is, however, expected that future Speakers in this country will try to model their high office on the British model and by remaining aloof from all political controversies discharge their duties impartially and inspire confidence in all sections of the House.

### **Parliamentary Privileges and Immunities**

Members of Parliament enjoy certain privileges and immunities. They have personal liberty and enjoy immunity from penal action for the way they vote and speak. The only limitations set are the standing orders and rules of Parliament and other provisions of the Constitution. The Constitution forbids the discussion of the conduct of Supreme Court or High Court Judge in the discharge of his duties, except on a motion to remove him. Members are not liable to arrest on civil process for a period extending for 14 days before and 14 days after a session. This immunity does not extend to insolvency proceedings, nor to preventive detention, nor to arrest in criminal proceedings. There are certain other privileges which are collectively enjoyed by the House. The House can exclude strangers from the precincts of the House. The House can punish a stranger for misconduct or contempt. It can summon any person to give evidence, information or to answer a charge. It can try and punish any person for contempt or breach of parliamentary privileges, whether committed inside or outside the Parliament.

### **Supremacy of the House of the People**

The House of the People enjoys supremacy over the Council of States in three respects. First, Cabinet is responsible to the House of the People and not to the Council in accordance with the well-established parliamentary convention in England where the Cabinet is only amenable to the control of the Lower House of Parliament. Second, it votes supplies necessary to carry on the Government. All money bills are introduced in the House of the People. They are submitted to the Council of States where they cannot be delayed beyond a period of 14 days. Even if rejected by the



Council, they receive the President's assent if passed again by the Lower House by a simple majority of votes. Third, in regard to other bills including bills for constitutional amendments in which the two Houses share equal power of participation, the superiority of the House of the People is established by the fact that in case of difference of opinion, the final decision is made in a joint meeting where the House of the People will have its way due to its overwhelming numerical strength. The House of the People 'is a grand inquest of the Indian nation' and controls the entire field of administration.

### The Council of States

The Council of States is the Upper Chamber of the Indian Parliament. Although the Council gives representation to the constituent units of the Indian Federation, it does not follow the principle of equality of representation for the units as is the practice in the U. S. A., Australia and Switzerland.

*Composition.* The Constitution has fixed the maximum strength of the Council of States at 250, out of which 12 members are to be nominated by the President having special knowledge or practical experience in respect of literature, science, art and social service. Members representing the States are elected by the elected members of the respective State Legislative Assembly and the electoral college in accordance with the system of proportional representation by the single transferable vote. The allocation of seats to the various States is made mainly on the basis of population but the smaller States are accorded some weightage. The total number members of the Council of States including the 12 nominated members, before the passage of the Re-organization Bill, was 219. Thereafter, the strength was increased to 232 as follows :

<i>Name of the State</i>	<i>Number</i>
Andhra	18
Assam	7
Bihar	22
Bombay	27
Kerala	9



Madhya Pradesh	16
Madras	17
Orissa	10
Mysore	12
Punjab	11
Rajasthan	10
Uttar Pradesh	34
West Bengal	16
Jammu & Kashmir	4
Delhi	3
Himachal Pradesh	2
Manipur	1
Tripura	1
Nominated by the President	12
	<hr/>
TOTAL	232
	<hr/>

*Qualifications for Membership.* A candidate for membership of the Council of States must be a citizen of India and at least 30 years of age, and he must further not suffer from any disqualification for membership of Parliament.

*Term.* The Council of States is a permanent body, not subject to dissolution. One-third of its members, however, retire at the expiration of every second year. This means that the term of the office of all members is six years.

### **Powers of the Council of States**

The Council of States is intended to be less powerful and influential than the popular House. It cannot compel the resignation of the Union Cabinet by registering an adverse vote against it. Its powers over finances are strictly limited as it cannot delay a money bill beyond 14 days. With regard to other bills including constitutional amendments, its power of suspensive veto is not beyond six months. In case of disagreement there is a joint meeting of the two Houses in which the will of the Lower House prevails because of the latter's numerical strength. The second chamber cannot, therefore, exercise a veto on legislation. It can only delay the passage of ill-considered measures.



The existence of this House is justified on the ground that it not only represents the constituent units of the Indian Federation but also includes in its membership men of intellect and varied experience. The Council is a House of elderly statesmen who consider controversial matters in a calmer atmosphere and enable people to understand public issues objectively and not in a partisan spirit. It also has the special responsibility for protecting the interests of the States, because without its concurrence by a 2/3rd majority, Parliament cannot legislate on any matter specified in the State List.

#### Is the Council of States a Superfluity ?

There is an overwhelming body of opinion in India against the continuance of second chambers. It is argued, firstly, that a second chamber represents reactionary elements who want to block progress. In the words of Laski, the second chamber 'will be a premium not upon improvement but upon opposition in terms of vested interests.' Powerful members of the ruling party after being defeated in a contest for seat in the 'lower chamber' are generally accommodated in the second one. Secondly, it is argued that the work of legislation is highly complicated and is done at committee level. The second chamber unnecessarily duplicates the work of legislation. Such a body can serve no useful purpose. If it is constituted on the elective principle as in the U. S. A., it will claim to derive power from the people and thus will prove a rival to the first House. This will bring the two chambers into conflict and friction. It is composed on the principle of nomination, such a chamber becomes worse than useless, because it creates vested interests, as in the Canadian Senate and the British House of Lords.

If we examine the above view carefully, we shall find that all second chambers with the exception of the British House of Lords and the Canadian Senate do not represent vested interests; on the other hand, they represent various interests not represented in the Lower House. There are certain people of outstanding ability and wide experience who cannot bear the strain of an electioneering campaign and consequently they do not contest elections. Such people



can always secure representation in the second chamber. The lower chamber which represents the masses considers an important issue not dispassionately but from a partisan viewpoint. The decision made by it is oftentimes hasty and rash. The second chamber secures discussion of such measures in a well-informed and objective manner. It is able to throw better light on it and is sometimes successful in facilitating a compromise between different groups. Thus, the second chamber by interposing necessary delay allows passions to subside and secures reconsideration by the other House of ill-considered measures passed in the heat of the moment. The Council of States in this respect can claim to be called the ideal second chamber of the world. It is differently composed from the House of the People. It is not directly elected by the people but is indirectly elected by the members of the State Assemblies and so it cannot claim to be the rival of the latter. It does not represent vested interests. Its membership includes elderly and experienced people who can give the benefit of their advice on numerous issues facing the country. India is a big country with numerous complex problems of national importance. They cannot be left to be determined solely by the House of the People predominantly elected by a single majority party or coalition of parties. It is necessary that such matters be referred to the other House for the consideration of elderly and experienced people who may discuss it in a calmer atmosphere and offer their valued suggestions. The Council will thus act as a filtering body of the common impulses of the people. One must also remember that the framers of the Constitution wanted the Council to play a significant role in the Constitution. They did not want the Council to override the will of the people as represented in the House of the People. However, they granted the Council co-equal powers with the House of the People in legislation and in proposing constitutional amendments, so that it might exercise due restraint on the democratic recklessness of the Lower House. In case of disagreement it may compel the joint sitting of the two Houses to be called, where a decision can be made only after sober reflection and not in hot haste.



The framers granted certain other significant powers to the Council where it might share equality with the lower House in certain important constitutional issues. It has been given equal powers with the Lower House in initiating or deciding impeachment charges against the President and in deciding removal of judges of the Supreme Court and High Courts. Its approval with the Lower House is necessary for the continuance of various proclamations by the President under emergency.

The Council represents the interests of the units and the collective interests of the nation. That is why equality of representation has not been accorded to all the units. Members of the Council of States are elected by members of the State Assemblies and the quota of seats for each State is determined on the population basis, the smaller States, however, enjoying a little weightage in the matter of representation. The federal idea and national interest are thus harmonised. Parliament is empowered to legislate in the sphere of the States in national interest but the concurrence of the Council, as the sole custodian of the rights of the States by a two-thirds majority is necessary. The Council has maintained a true balance between regional and national interests.

The success of bicameralism in the Union Government depends upon the proper selection of the members of the Council of States. There is no doubt that the framers of the Constitution have paid due heed to the question of composition of the Upper House. It represents not only the elderly and experienced representatives of the States, but distinguished people from public life and those representing art, literature and science. The function of the Council is not to veto legislation, nor to put brakes on democracy. Its only work is to afford the nation an opportunity to pause, ponder and decide matters calmly and not to rush through them under the stress of emotion. There is no doubt that the Council of States with its limited size, superior personnel of able and elderly statesmen, and permanence will be able to fulfil its functions creditably as a deliberative body.

**Conflict between the House of the People and the Council of States**

Though, on the whole, the two Houses of Parliament



have so far functioned in perfect harmony, there have also been a few cases of conflict between them. One such incident occurred during the budget session of 1953 when the Council of States took up the consideration of the Income Tax (Amendment) Bill, 1952, as passed by the House of the People on April 29, 1953. The Speaker had certified the bill as a money bill. Some of the members argued that it was not a money bill and the Law Minister, who was leader of the Council, remarked that the Council would be satisfied if the House of the People declared categorically that the Speaker had applied his mind to this question and issued the certificate after full consideration.\* The House of the People took exception to the remarks of the Law Member and the Chair observed that the Law Member should explain the matter before the House. The Council of States resented this and passed a resolution directing the Leader of the Council not to present himself in any capacity when the matter was brought up in the House. The members of the House of the People were indignant at this and asserted that Ministers were responsible to the House of the People and not to the Council and questioned the propriety of the Council's resolution. This quarrel was dropped after due apologies from the Law Minister and at the intervention of the Prime Minister. Another conflict was caused in 1954 by the remarks of Mr. N. C. Chatterji, who during the course of a speech remarked that "the Upper House which is supposed to be a body of elders, seems to be behaving irresponsibly like a pack of urchins". A question of privilege was raised in the Council of States and the Secretary was asked to ascertain facts from Mr. N. C. Chatterji. The question of privilege was raised on the following day in the House of the People and a Joint Committee of the two Houses inquired into this question. By the end of the year, the two Privilege Committees were able to work out an acceptable procedure for the future by which a member of one House could not commit a breach of privilege of the other House.

The above incidents have led some members to urge the abolition of the Council of States. The Government's

---

\*C. S. Debate April 29, 1953 — C. S. Debate May 1, 1953



main contention is that it is yet too early to take such a drastic step. Others are of the view that the Council may be retained, but its powers should be clearly defined. The two Houses should not try to perform the same functions, otherwise there will be more chances for conflicts.

### **Powers of Parliament**

The British Parliament is sovereign and omnicompetent. In the words of Blackstone, "it has sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving and expounding of laws, concerning matters of all possible denomination". The legislative competence of the Indian Parliament is, however, limited in normal times to subjects included in the Union List and Concurrent List. It has normally no jurisdiction over the State list, although it may legislate on State matters if empowered to do so by a 2/3rds majority vote of the Council in national interest. Its supremacy in its own sphere is subject to constitutional restraints. It may not make laws abridging any of the Fundamental Rights granted to citizens in Part III of the Constitution. The laws framed by it are subject to judicial review. However, the Indian Parliament enjoys more powers than are enjoyed by a Federal legislature of any State in the world. The Congress in U.S.A, and the Federal Parliament in Australia cannot make laws encroaching upon the jurisdiction of the States. The Indian Parliament has been granted power to legislate for the States concerning provisions implementing any treaty or agreement with a foreign State. During emergency, the Indian Parliament assumes unlimited powers of legislation and administration.

The powers of Parliament may be summarised under four heads :—

(1) legislative; (2) financial; (3) executive and (4) miscellaneous.

### **Legislative Powers**

In the case of legislative powers, Parliament can legislate in all matters included in the Federal and Concurrent lists.



If there is disagreement between the Houses of Parliament, the President will summon a joint sitting where the decision will be carried by a majority of votes of members sitting and voting. Parliament can also legislate on subjects in the State list if authorized to do so by a 2/3rds majority of votes of the Council in national interest, or at the request of the States. Parliament can also legislate for the entire country for implementing any treaty or agreement with other States.

### **Financial Powers**

Parliament, and more specially the House of the People can initiate a money bill. After being passed by the latter it is sent to the Council for its recommendations which it must make within 14 days.

### **Executive Powers**

Parliament, and more especially the Lok Sabha, maintains control over the administration by means of question, motions of adjournment, resolutions, and debates. Parliament may throw out the Cabinet by its adverse vote. Under the Constitution, the Cabinet is responsible only to the House of the People and not to the Council of States. With the decline of Parliament and growth of the power of the Cabinet, Parliament's role has been reduced to criticism of governmental policy. The cabinet now exercises formidable control over the House of the People due to effective party leadership and rigid party discipline.

### **Miscellaneous Powers**

Parliament, however, performs other useful functions. It exercises electoral functions along with elected representatives of State Assemblies for electing the President of the Republic. Secondly, it has the power of initiating, investigating and deciding impeachment charges against the President and the power of removing Supreme Court Judges or Judges of High Courts. Thirdly, its authority is necessary for continuance of the various proclamations issued by the President in emergencies. Fourthly, it has the power of amending the Constitution according to prescribed procedure.



Lastly, Parliament is a great forum of deliberation. It informs the public how the country is governed and, therefore, it gives direction and control to public opinion. When there is an important debate on domestic and foreign policies, the chamber and the public galleries are crowded.

#### Select Bibliography

*Campion* : Parliament—A Survey  
Chapter VI, XI, XIII.

*Jennings* : Parliament.

*Neumann* : European and Comparative Govt.  
Chapter 4 pp. 66-85

*Alan Gledhill* : The Republic of India Parliament.  
pp. 113-123.



## CHAPTER 22

### PARLIAMENT AT WORK

#### Conduct of Business in Parliament

The President of India is obliged under the Constitution to summon Parliament from time to time, but the interval between any two sessions should not exceed six months. The President may prorogue the House whenever he chooses to do so. The Houses may adjourn at their own discretion and it usually happens at the end of a sitting, but the effect of the prorogation is to bring the session to an end.

In India, Parliament holds the session each during spring and autumn. The first session starts in January and lasts till April. The second session begins in September and continues till December. Parliament may be summoned during the other months also if business demands it.

#### Opening of a New Session of Parliament

Before the opening of a new session, the members on an appointed date have to assemble and to take the oath of office. The next thing is the election of the Speaker. The opening session provides an opportunity for much pageantry and marked ceremonial. In England at the regular opening hour of the House, *i. e.*, at 2. 30 p. m., the Speaker, appearing in wig and gown, enters the House in a procession. All members stand up in respectful silence, when the procession moves to the dais. The proceedings start with a prayer. The practice also prevails in Australia, New Zealand, Ireland and South Africa. In India the session commences with the President's address to the two Houses assembled together. The President addresses only the first session of Parliament after the general elections, and thereafter the first session of every year. The first sitting of the provisional Parliament began with a silent prayer for two minutes, but the practice has since been abandoned.

#### President's Address

The President's address is a review of the general situa-



tion in the country and the measures which the Government propose to take to deal with it. A debate on this address follows and at the end a resolution of thanks is moved. Members of the Opposition may criticise the address and move amendments to it, as the Presidential address embodies the governmental policy in the coming year.

### Routine Business

*Questions.* The first hour of the first five days in the week is devoted to questions. This provides an opportunity to bring up grievances. Questions are asked to elicit information, and for drawing attention to grievances. Ten days' notice of a question is given in writing in order to enable a minister to prepare the answer. Questions have become so numerous that they are rationed. Members may ask for either oral or written replies. There is no limit for written replies which are placed on the table of the House. But any three oral questions can be asked on any particular day. Different days are allotted for questions regarding the various Ministries. It is done in such a way that the turn of each Ministry comes twice in a week. A question already answered cannot be asked again. There are 22 conditions of admissibility of questions. The final decision as to admissibility of a question rests with the Speaker. Ministers in replying to questions should show alertness of mind, wit and humour. Supplementary questions can also be asked in order to seek further elucidation of an answer. There is also provision for a short 'half an hour discussion' on important matters arising out of questions on two days in the week.

*Other Forms of Business.* With leave of the Speaker, an *adjournment motion* may be moved to discuss a matter of urgent public importance of recent occurrence, if supported by more than 25 members. Before 1947, it was a common practice to move such motions for the ventilation of grievances, but after the attainment of freedom, fewer notices of such motions are given, and they are not pressed because members get plenty of opportunities to raise discussion on important matters even otherwise. For debating less important matters without moving an adjournment motion there is provision for short discussion and 'calling attention' to such matters.



The House then proceeds with the discussion of bills and resolutions pending before it.

*Official and Non-official Business.* The time of Parliament is carefully rationed in order to ensure an orderly continuity of business. Both in England and India the bulk of the business of the House is official and very little time is allowed for the private members. In France the proportion of time allowed to private members is much greater, owing to the weakness of the executive and intransigence of the parties. In the U. S. House of Representatives the dominant party monopolises all the time of the House. In India the Cabinet is the master of the time of the House and only a day per week (the last two and a half hours of the sittings on each Friday) is allotted to private members' business. As the number of non-official bills or resolutions is usually larger than the days allotted for such business, priority is determined by drawing of lots.

The framing and working of the programme of business of Parliament is the responsibility of the Department of Parliamentary Affairs. It determines the length of any session, the priorities for the different items in the programme and the amount of time to be allotted to each. This is done in close liaison with two higher co-ordinating bodies, *viz.*, the Parliamentary and Legal Affairs Committee of the Cabinet on the Government's side and the Business Advisory Committee for each House on Parliament's side.

The order of business is so arranged that each House is fully occupied, urgent and essential business is disposed of in time and monotony is avoided by alternating legislative with non-legislative business.

*Control of Debate.* Behind 'the Speaker's chair' an agreement is made between the Government and the Opposition regarding the amount of time allowed for debate, and this agreement is respected by the Speaker. It is the duty of the Speaker to secure expeditious despatch of work and to ensure fair debate. This is only possible if the minority leaders do not indulge in dilatory tactics and obstructionism. A closure rule has been adopted to curtail discussion and to put the question to vote. A more drastic method is the



'guillotine', according to which the debate terminates at a certain specified time, and all issues relating to the Bill are immediately put to vote. Another form of 'closure' is known as the 'Kangaroo' which enables the Speaker to select amendments which he considers appropriate for discussion and vote and to exclude others. All these forms of closure have been adopted by Parliament to secure efficient despatch of business. The Speaker allows these motions to be moved if he is satisfied that there has been a fair debate and there has been no infringement of the rights of minorities for a fair discussion.

*Legislative Procedure.* The process of legislation takes up a large portion of Parliament's time. Bills may be classified under two heads, namely, Governments Bills and Private Members Bill. Government Bills may again be divided into Money Bills and non-Money Bills.

✓ *Drafting of a Bill.* The drafting of a bill is a very exacting job. In England a special office of draftsmen (Parliamentary Council to the Treasury) is employed for drafting government measures. In the United States special officers, called legislative counsels, were created in 1918. They draft public bills at the request of any committee of either House of Congress. In France departmental officials or entrusted with bill drafting. In India legal experts are employed for drafting a Bill.

✓ *Introduction of the Bill.* All Bills other than financial Bills may be introduced in either House of Parliament. The motion for leave to introduce a Bill is a formal business which is taken up after the Question Hour. The Speaker places the motion before the House. There is no opposition at the introductory stage. However, if it is opposed, it is simply an index of the intense feeling of the House against the measure. In 1954, the introduction of the Preventive Detention Bill was opposed.

✓ *Publication of Bill in the Gazette.* After the House has granted leave for introducing the Bill, the Bill is published in *The Gazette of India*.

✓ *Stages in the Passage of the Bill.* In England the first reading stage of the bill is formal. At this stage only the title



of the bill is read aloud. Under the 'ten minutes' rule', the sponsor of the bill gives a brief explanatory speech about the aims of the bill and there is no debate. Almost a similar practice is followed in India.

✓ *Two Stages in Second Reading.* The second reading is divided into two stages. The first stage consists of a general discussion of the principles of the Bill, and the second stage relates to discussion of clauses, schedules and amendments. During the first stage of the second reading, the member-in-charge of the Bill may move that the Bill may be taken into consideration by the whole House or be referred to a Select Committee of the House.

✓ *Committee Stage.* The Committee considers the Bill in detail and proposes amendments as it thinks fit and submits its report to the House. Those members of the Committee who do not agree with the majority opinion can append to the report their note of dissent.

✓ *Report Stage.* The report as presented is printed and copies are made available to members. The Bill as reported by the Committee is taken up for consideration by the House.

✓ *Clause by Clause Discussion.* At this stage there is discussion of the Bill clause by clause. Members may move any amendment to any clause of the Bill and discuss it in detail.

✓ *Third Reading.* The third reading is confined to the passing or rejecting the Bill as a whole. No substantial amendments are permitted.

#### **Disagreement between the two Houses**

After the Bill has been passed by one House, it is sent to the other where again it passes through similar stages of reading. If the two Houses agree, the Bill is sent to the President for his assent, but if there is disagreement, there is a joint sitting of the two Houses and final decision is taken by a majority of the votes of the members present and voting. After the Bill is passed by the two Houses, it is sent to the President for assent. The President may assent to the Bill or withhold his assent it. If the Bill is again passed by the originating House, the President cannot withhold his assent and the Bill becomes an Act.



**Financial Procedure**

Financial bills in England are introduced according to the procedure (a) that no one except a responsible minister of the Crown may originate a new charge or increase an existing one; (b) that the House will not grant money unless demands are initiated in a Committee of the whole House; (c) that debates upon the annual financial legislation take place within the space of time allocated; (d) that there is a retrospective survey of the legality and economy of the appropriated amounts.

In India, as in England, the annual financial statement is introduced in the Lower House of Parliament by the Finance Minister with a speech. The statement gives the estimated receipts and expenditure of the Government for the financial year commencing from April 1st each year. The budget estimates show separately (a) expenditure charged on the Consolidated Fund of India and (b) votable expenditure. The Constitution permits discussion on the former but on voting is allowed. Discussion is also not allowed on the salaries and allowances of the President.

The budget is also laid before the Council but the Council can only discuss it and has no power over the grants.

**Consideration of the Budget in the House of the People**

The budget is discussed in four stages :—(a) General discussion; (b) Voting of demands, known as demands for grants (c) Appropriations Bill and (d) Finance Bill. During the first stage, general discussion of the budget takes place a few days after its presentation. Two or three days are assigned to it. At this stage only general principles are discussed and there is no detailed discussion on any item. Members may offer criticism of the taxation proposals. The Finance Minister has the right of reply at the end.

**Demands for Grants**

After the general discussion, the House of the People sits as the House and not as the Committee of the Whole



House, as is the practice in the House of Commons. About 8 to 12 days are allotted to the voting of demands against 26 days in Britain. The Speaker, in consultation with the Leader of the House, fixes a time limit for particular demands and for the entire expenditure part of the budget. When the time limit is reached, all discussion comes to an end and a vote is forthwith taken.

Each demand contains an estimate of the total grant proposed for each department with a statement of detailed expenditure. Demands for grants are only proposed by a government member on the recommendation of the President and not by a private member. Private members can introduce motions reducing or rejecting items of expenditure. Cut motions are of two kinds, *i. e.*, (a) Economy cut and (b) Token cut. The former proposes to effect economy in expenditure and the latter is a censure motion against the Government. If a token cut motion is passed, it amounts to a motion of no-confidence against the Government and the Cabinet must resign. Such motions are generally described as Rs. 1- or Rs. 100 cut motions.

#### **Supplementary Grants**

In certain circumstances, additional expenditure becomes necessary. In such cases, supplementary grants are voted by the House according to the prescribed procedure.

#### **Appropriation Bill**

When the House of the People has voted all the grants, they along with the 'Consolidated Fund' charges (which include the salaries and allowances of the President of the Republic, salaries of the Judges of the Supreme Court, Chairman and Speaker of the two Houses, Comptroller and Auditor General of India, charges in respect of Public Debt of India, etc.) are incorporated in a bill called the Appropriation Bill. This is presented to the House of the People and passed. It is submitted to the Council of States which may accept or reject it within 14 days. The bill then receives the assent of the President and becomes an Act.

#### **The Finance Bill**

After the passage of the appropriation bill, the taxation proposals of the Government of India are incorporated in a sin-



gle Finance Bill. The Bill follows the same procedure as the Appropriation Bill. The Bill is, however, referred to a Select Committee before it is considered by the House.

#### Votes on Account

Pending the voting of grants by the House, advance grants are made by the House of the People in respect of the estimated expenditure for a part of the ensuing financial year. This is known as Vote-on-Account.

#### Excess Grants

At the close of the year, when the expenditure under the various grants has been compiled and the accounts closed, it is found that excess expenditure is incurred under some of the grants not covered in supplementary grants. This has to be regularised by Parliament. Parliament regards it as a great lapse.

#### Differences in the Financial Procedure of India and England

Although the general principles of financial procedure in England and India are the same, there are important differences in the presentation of the budget. Firstly, the budget in Britain is not fragmented and introduced and passed in instalments, as is the practice in India. Secondly in England the budget is not discussed in the House of Lords. In India the Council is also afforded an opportunity of discussing it. Thirdly, in England it is the Committee of the Whole House which considers the voting of the demands and of taxes. In India the House sits for deciding appropriation and taxation proposals. Fourthly, the budget speech in England is made after the revenue part of the Budget is introduced in the Committee of Ways and Means, but in India the budget speech is made by the Finance Minister at the Introduction stage. In England there is a Committee of Public Accounts which goes into the details of expenditure and sees if they are properly sanctioned. It is a Committee of the House of Commons only and the Chairman of the Committee is usually an opposition member. Such a Committee functions in India also but this Committee is composed of members from both the Houses and is presided over by a member of the Government party.



## Private Members' Bills

Bills which are sponsored by private members can be taken up only on the days fixed for Private Members' business. According to rules, every alternate Friday is available for Private Members' Bills, the other Friday being devoted to Private Members' Resolutions. These Bills are scrutinized in the Secretariat of the House and members are helped in drafting their Bills in a proper form.

The procedure of introducing a Private Member's Bill is the same as that for other Bills, except that such a bill is referred to a Committee on Private Members' Bills which consists of not more than 15 members. The Speaker nominates a Chairman from amongst the members of the Committee. If the Deputy Speaker is one of the members of the Committee, he automatically becomes the Chairman.

## Parliamentary Committees

The Indian Parliament has not strictly conformed to the Committee system prevailing in Western countries. We do not have the Standing Committees but only select committees to which Bills are referred. In England there are six Standing Committees composed of between 20 and 55 members of the House, to which most Bills are referred. In the U. S. A., there are 19 Standing Committees whose membership ranges between 4 and 50. In France there are 18 Standing Committees composed of 44 members each. In India Select Committees are appointed with every Bill. The members of these Committees are appointed by the House in proportion to the party strength in the House. The Speaker nominates the Chairman of each Committee. The Deputy Speaker, if he happens to be a member of a Committee, acts as its Chairman. The quorum fixed for Committee is  $\frac{1}{3}$ rd of their membership. In the case of important Bills Joint Committees of the two Houses are appointed, the House of the People nominating  $\frac{2}{3}$ rds and the Council of States  $\frac{1}{3}$ rd of members. The membership of Joint Committees is near about 50. Membership of other Committees is smaller and ranges between 7 and 15.



**Difference in the Powers of the Committees of Legislature in Different Countries**

Committees in England and India derive their powers from Parliament and work under its direction and control. In the U. S. A. Committees, in the words of C. Perry Patterson, "are little cabinets enjoying the initiative and leadership in legislation and whose Chairmen are practically ministers." They can be more free with the Bill than is possible for a Committee in England or India to be. They can smother Bills and can make major amendments cutting at the root of the principles of the Bill. This is not possible in Britain and India. Committees in U. S. A. can pigeon-hole a Bill but Committees in Britain and India must return the Bill to the House within a specified period. Committees in France also enjoy substantial powers. The reports in charge of the Bill and Presidents of the Committees are rivals of the ministers. The French National Assembly looks to them for guidance.

The comparative role of Committees in different countries has been beautifully summed up by Finer in these words: "In England the Government, in France the Government and the Commissioners.....in U. S. A. the party leaders and the Committees decide the debate, the rest is advertisement, explanation, electoral strategy, the joy of talking and sealing wax."

**Committees of the Indian Parliament**

✓ Apart from Select Committees, there are other committees in the Indian Parliament which deal with particular subjects. They can be divided into three broad categories (1) Committees for Financial Business, *e. g.*, the Estimates Committee and the Public Accounts Committees, (2) Legislative Committees, *e. g.*, Committee on Subordinate Legislation, Committees on Petitions, Committees on Assurances and Committees on Private Members' Bills, and (3) Committees of a general nature concerned primarily with the organisation and powers of the House, such as Rules Committee, Committee of Privileges, the House Committee, and Business Advisory Committee.

These Committees are appointed either on a motion



adopted by the House itself or by the Speaker. One-third of the members of a Committee constitute the quorum for the meeting. The sittings of the Committee are private; and they are empowered to summon witnesses before them and require production of any paper or records. Below we discuss the working of some of the more important Committees of the Parliament.

*Financial Committees.* The Committees which exercise the responsibilities of financial control are called the Estimates Committee and the Public Accounts Committee. The former is concerned with scrutinizing the annual budget estimates of the Government and the latter with scrutinizing the final accounts of the Government.

*The Estimates Committee.* It consists of 25 members and its members are elected by the House of the People annually from amongst its members according to the principle of proportional representation. Ministers are debarred from membership of Financial Committees. In England also, there is a Committee on Estimates which is composed of 28 members. Its function is to examine the estimates presented to the House and "to report economies consistent with the policy implied in those estimates." It has the assistance of two Treasury officials. The Estimates Committee of the Lok Sabha performs similar functions. Its quorum is 8 members. The work of the Estimates Committee consists in examining the estimates of Ministry. Usually it takes up two or three Ministries each year. It recommends economies in expenditure and suggests the form in which the estimates should be presented to Parliament.

*The Public Accounts Committee.* The Public Accounts Committee was first set up in India in 1923. It consists of 15 members and its Chairman is usually a member of the Opposition. It has the Comptroller and Auditor-General as its financial adviser. Its members are elected on the basis of proportional representation and the single transferable vote system. It has a tenure of one year and its quorum is 5. Its function is to examine the accounts of the various departments of the Governments of India and to see if they have been spent in accordance with appropriations sanctioned by



Parliament and that no unauthorised expenditure has been incurred. It is not possible for the Public Accounts Committee to examine the accounts of all departments of the Government of India and consequently it examines the accounts of only one or two departments every year. It also examines the accounts of the government enterprises or semi-government enterprises, such as the Bhakra Dam or the Damodar Valley Corporation each year. Its work is usually of a retrospective nature. Its existence and reports are a great restraint upon the executive and its report is discussed in the House of the People and action is taken on its recommendations.

✓ *Other Committees.* There are other Committees also such as the Committee on Subordinate Legislation, the Committee on Petitions, the Committee on Government Assurances, the Rules Committee and the Committee on Private Members' Bills which are of a non-financial nature. It will be worth while to explain the working of a few important Committees.

#### **Business Advisory Committee**

✓ This Committee which consists of 15 members was first set up in 1952. It meets under the chairmanship of the Speaker three or four times in a session and decides on the expeditious disposal of business before the House.

#### **Committee on Privileges**

✓ It is a body nominated by the Speaker. Its main function consists in going into the questions of violations of the House's privileges. It submits its reports to the whole House.

#### **Committee on Private Members' Bills**

✓ It was first set up in 1953. It is also nominated by the Speaker. Its main function consists in fixing a time limit for Private Members' Bills and to lay down an order of procedure for them.

#### **Committee on Subordinate Legislation**

✓ During these days of social and economic complexity, it is not possible for legislatures to pass laws of all kinds,



with detailed provisions for meeting all possible emergencies. The Bills, therefore, only lay down general principles, and the power to frame rules and bye-laws under the Acts as left to the executive. This power to frame rules and bye-laws under an Act by the minister in charge of a particular department, or on his behalf by the officials in the department, is known as the power of delegated or subordinate legislation. This practice has given great accession of strength to the bureaucracy, because Parliament cannot exercise control over the various rules and regulations issued by the latter. Such powers create a real danger to civil liberties. Lord Hewart, in his book 'New Despotism' says, "Delegation of powers constitutes a real danger to the liberties of English citizens". He points out that this system placed the Government departments beyond the jurisdiction of the courts and above the sovereignty of Parliament.

*Work of the Committee.* India has also been following the practice of delegated legislation. After the attainment of freedom it was felt that something should be done to secure for Parliament effective control over the Rules and Regulations issued by the Government Departments, which put the rights of private individuals and associations in jeopardy. The Speaker of the House of the People appointed on December 1, 1953 a Committee of 10 members of Parliament known as the Committee on Subordinate Legislation. The function of the Committee was to review several laws enacted by the Indian Legislative Assembly of the pre-Partition days and others passed by the Indian Parliament since 1948. It recommended that the Acts authorizing delegation of rule-making powers in future should contain express provisions that rules made thereunder should be subject to modification by the House. Such rules were also to be laid before the House within a couple of days after their publication.

In the Third Report of the Committee on Subordinate Legislation (1955) the Committee complained that only such rules came within the purview of examination of the Committee which were laid on the table of the House and a large number of rules made under delegated powers of legislation were not laid on the table because there was no such



express provision laid down in the relevant Acts. The Committee felt that it was desirable for it to scrutinize the whole range of subordinate legislation.

The Committee also urged the need for giving publicity to Statutory Rules and Orders all over India, so that people might become aware of them and understand them properly. At present there is no systematic procedure or machinery to give such publicity.

The Committee has done very good work and taken great pains in examining a large mass of rules and orders. This is essential to check the growth of executive despotism in our country.

#### **Committee on Petitions**

In India the right of presentation of a petition was recognised as early as 1926, although this right was confined only to Bills pending before the House. On October 6, 1953 the question of enlarging the scope of the petitions to include matters other than Bills was raised and the matter was referred to the Rules Committee. The Rules Committee decided to enlarge the scope of petitions on matters of general public interest and this decision was accepted.

*Constitution and Functions.* The Committee consists of not more than 15 members, one of whom is to act as chairman. The Committee examines every petition referred to it and submits its report to the House. Since the enforcement of the new rules in January 1954, the Committee admitted 57 petitions up to the end of 1955. One of the petitions related to the grievances of displaced persons. The Committee admits petitions on Bills pending before the House and directs the circulation of the petition to the members before the Bill is taken up in the House.

Such petitions are useful because they enable the members to gauge public opinion on important matters and also to suggest appropriate measures.

#### **Committee on Assurances**

The Committee on Assurances was set up on the recommendation of the Rules Committee towards the end of 1953. It consists of 15 members, including one Chairman. The func-



tion of the Committee is to scrutinize the assurances, promises, and undertakings given by ministers from time to time on the floor of the House and to report on the extent to which such promises have been implemented.

*Work of the Committee.* In its First Report (1954), the Committee pointed out that from May 1952 to May 1953, 1391 assurances were given. Up to March 1, 1954, 924 assurances had been implemented and reported to the House and 467 assurances still remained to be implemented. The Committee felt that the value of assurances was lost "if they were not implemented quickly". The Committee proposed a maximum period of two months for the implementation of an assurance.

The Committee in its Second Report (1955) stated that out of a total of 2875 assurances till the 8th session of Parliament in 1954, as many as 2115 were fulfilled, but as many as 760 assurances remained to be fulfilled.

It would appear from the above survey that Parliament is able to exercise effective supervision and control on the work of the executive through its various Parliamentary Committees. It exercises control in a general way through its power to sanction the budget and accord the necessary authority to raise funds. But after the money is sanctioned, the administration exercises its free hand to spend it in any manner it likes. It is, therefore, necessary that the other Committees exercise vigilance and see how the administration carried out its day-to-day work in conforming with the policies, directions and wishes of Parliament. All this is necessary to safeguard the liberties of the citizens against the encroachment of the executive.

### **Evaluation of the Work of Parliament**

Conflicting opinions have been expressed about the actual working of the Indian Parliament. One view which is shared by *The Manchester Guardian* is that it is an exemplary institution, and that it is working in a remarkable way "Pericles", to quote the paper, "said that Athens was the school of Hellas. Mr. Nehru without boasting may say that Delhi is



the school of Asia"\*. The opposite view is expressed by some Indian and foreign critics who assert that the Indian Parliament is no more than Pandit Nehru's Darbar : it is a facade which barely conceals an authoritarian dictatorship.† The real truth, however, lies somewhere between these two extreme views.

The utility of a Parliament is tested in the light of the functions that it discharges. Parliament must in the first place provide a platform for the ventilation of grievances and discussion of public policies. In the second place, it should control the executive in such a way that it restrains arbitrary governmental actions. The Indian Parliament performs both these functions. It provides ample opportunities for ventilation of grievances. The Question Hour, Half Hour Discussions, discussions on Demands for Grants and the General Discussion on the budget—all afford opportunities for ventilating the grievances of the public. However, Parliament's control over the executive is not so effective due to lack of organised opposition and the presence of splinter groups in opposition. Another defect is that contact between the members of Parliament and their constituencies is not quite intimate. Consequently, many of the real grievances of the people go unheeded. In the third place, the legislative procedure is complicated and hence very little time is left for debate and discussion of public policies. Experience shows that sometimes members have to dispense with the question hour to allow non-official business to proceed. In the fourth place, member's interest in parliamentary business is not continuous and sustained. They do not sit in the House for long hours. In the fifth place, Parliament's control over public corporations and national undertakings is only nominal. The Public Accounts Committee is not very effective as its scrutiny is made too late to be useful. The remedy lies in instituting a Parliamentary Committee for the control of all such undertakings. Further, the legislative procedure needs to be simplified; more work needs to be entrusted to the Committees, so that there may be economy of time and

\*Quoted in Indian Express—7 March 1952.

†Parliament in India—Morris, Jones, p. 328-329.



Parliament may be able to discuss and debate only matters of general policy.

In the absence of an effective Opposition, the only control exercised on the executive is through the institution of Parliamentary Committees. The Public Accounts Committee brought to light financial irregularities in the Hirakud Dam Project and exposed the Jeep Deal Scandal. The Committees administer shock treatment to the administration and that has a sobering effect on the latter. The Estimates Committee also tries to secure economy in public expenditure and exercises restraint on the executive. The Committee of Assurances exercises constant vigilance and watchfulness on the Government and prevents it from developing into an autocracy. Similarly, the Committee on Delegated Legislation scrutinises the rule-making powers of the executive. Parliament in India is a useful institution and it serves the best interests of the country. The great need of the hour is to make it more effective and powerful. This is possible only if the electorate is educated and it develops a high degree of civic consciousness. Members of Parliament also require training and education in parliamentary methods and traditions. Apart from that our universities and educational institutions should encourage independent political thinking among students.

### Select Bibliography

- Laski H. J.* : Parliamentary Government in England, Chapter IV.  
*Herman Finer* : The Theory and Practice of Modern Government, pp. 436-508.  
*Herman Finer* : Governments of Greater European Powers, Chapter 6. pp. 111-119.  
*Lok Sabha* : Committee on Subordinate Legislation I-V Reports.  
 „ : Committee on Petitions, Ninth Report 1956-57.  
 „ : Committee on Assurances, First & Second Reports, 1954-55).  
 (Lok Sabha Secretariat)  
*Morris-Jones* : Parliament in India (Orient Longmans, 1956).



## CHAPTER 23

### THE STATE GOVERNMENTS

#### 1. The Executive

India is a union of states. Before the passage of the States Reorganization Act, there was disparity in the constitutional position of different States which were classified as Class A, B, C and D States. With the coming into force of the States Reorganization Act with effect from November 1, 1956, this distinction has disappeared. The Indian Union now comprises 14 states and 6 union territories. In the new set-up the States enjoy complete uniformity in regard to administration, legislation and schemes of economic planning.

#### Similarity in the States and Union Executive

The executive machinery in the Indian States is modelled on the pattern of the Union. Like the latter, they have a parliamentary form of government. The striking feature of such a government is the dual nature of the executive power. In the Union Government the President is the head of the State. In the States the Governor acts as the head. In theory, both enjoy considerable powers in regard to administration and legislation, but in actual practice they both act as mere constitutional heads. The real charge of the direction of affairs of the States is vested in the Council of Ministers in the Union as well as in the States. The latter are elected members of the Legislature and retain office only so long as they enjoy popular support. The President and the Governors maintain the continuity of administration when there are no Ministries in office. As ceremonial heads of State, they are surrounded with external trappings of pomp and ceremony and all symbols of power, but in actual practice they exercise very little power. The Council of Ministers holds real power but it exercises it subject to legislative control.

#### Nature of Parliamentary Government in the States

Parliamentary Government in England is a product of



convention rather than of statute. In India it is expressly provided for by the Constitution (Articles 163 and 164). But despite this statutory provision, there are no legal fetters on the powers of the Governors. They act on the advice of their Council of Ministers not by virtue of constitutional provisions, but as a matter of convention and for fear of facing a constitutional deadlock. It may be observed that some other constitutions provide in detail how the head of the State will act in accordance with the advice of his ministers. Article 32 of the Fourth French Republic says, "Every Act of the President of the Republic must be countersigned by the President of Council of Ministers and by a Minister". In the Constitution of Eire, Article 13, section 11, there is the following provision : "No power or function conferred on the President by law shall be exercisable or performable by him, save only on the advice of the Government." The Constitution of Japan says, "The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of State and the Cabinet shall be responsible therefor" (Article III). The Burmese Constitution says, "The powers and functions conferred on the President by the Constitution shall be exercisable and performable by him only on the advice of the Union Government" (section 63 (1)). The absence of a similar provision in the Indian Constitution was explained by Shri Alladi Krishna Swami Iyer, a member of the Drafting Committee, in these words : "The failure to enumerate in detail the incidents of responsible government would give sufficient scope for conventions to grow up. There is no doubt that Governors will carry on the administration on the advice of their Council of Ministers only. They would have no power to override the Ministry on any particular matter. Omission of a statutory provision in this respect is no defect. On the other hand, it would impart an element of elasticity to Constitution".

#### **Conventions of Parliamentary Government in States**

It is a well-established convention that if a Government is defeated on a vital bill involving a question of policy passed by the House, the Ministry tenders its resignation. This convention is followed not only in the Mother of Parliaments but also in Commonwealth countries where the parlia-



mentary form of government prevails. India has followed this precedent. A no-confidence motion was passed in 1954 against the (P. S. P.) Pattom Thanu Pillai Ministry in Travancore-Cochin and against the Prakasam Ministry in Andhra. Both the cabinets resigned. Although, in broad outlines, India has followed parliamentary conventions set up in the United Kingdom, it has departed in certain other particulars from it. In the United Kingdom it has become a convention that when a Ministry is defeated on a major issue of policy in the House of Commons, the Prime Minister may advise the Crown to dissolve the House of Commons on the assumption that the House does not sufficiently reflect the electoral will and so an appeal is necessary to the political sovereign. The Commonwealth countries have not followed such a convention. There a practice has grown that the Governor-General shall explore all possible means of forming an alternative Ministry, and if such a one is possible, he may refuse to accede to the request of the defeated Ministry for the dissolution of the House. India seems to have followed this Commonwealth convention. In Travancore-Cochin, the Rajpramukh did not accede to the request of the defeated Pillai Ministry to dissolve the Assembly. He explored all possible means of forming an alternative government and succeeded in installing the Congress Ministry in power. In Andhra, however, the Governor found that no alternative Ministry was possible and so he dissolved the Assembly and ordered fresh elections. Thus, Indian Parliamentarians have adopted the parliamentary conventions of that United Kingdom to suit their special needs and requirements.

### The Governor

*Mode of Appointment.* The Constitution lays down that the Governor shall be appointed by the President of India and shall hold office for five years unless he resigns earlier. The mode of appointment of Governors in India is different from that prevailing in other countries. The Governor of a State in the U. S. A. is directly elected by the people of that State. In Australia, the Governor of a State is appointed by the Crown, but the Prime Minister of the State concerned is invariably consulted in the matter. In Canada the



Lieut. Governor of a Province is appointed by the Governor-General on the advice of the Central Cabinet. In India, the Governor is appointed by the President on the advice of the Union Cabinet. A convention is developing in this respect that the State Ministry is also consulted in the matter before the appointment is finalised. Another convention which has grown up in this connection is that Governors usually come from outside the State to which they are appointed. The only exception made was in the case of Dr. H. C. Mukerjee, who was appointed Governor of West Bengal, his native State. The outsiders have certain advantages over the residents. Firstly, they can act with greater independence and impartiality. They are not likely to be influenced by the internal party politics of the State. Secondly, their appointment emphasises the sentiment of national unity and militates against the narrow spirit of parochialism and linguism which seems to be developing in some parts of our country. Here it seems necessary to draw attention to another unhealthy convention which seems to be gaining ground in our country. It is that prominent leaders of the ruling party who are defeated at general elections are being nominated as Governors. After the 1952 elections, Shri K. Santhanam was appointed as Lt. Governor of Vindhya Pradesh. Recently, Shri V. V. Giri and Shri H. V. Pataskar have been appointed Governors, of the U. P., and Madhya Pradesh, respectively. This is an unhealthy convention indeed.

**Why are Governors appointed and not elected ?**

The question of selecting the Governors of States through an election was discussed in the Constituent Assembly of India. Those who were in favour of this method argued that it was more democratic. The principle of nomination was liable to abuse and might lead to favouritism. Further, it was pointed out that the appointment of the Governors by the President would undermine the autonomy of the States and might lead to Central interference in the internal affairs of the States, the Governor being the nominee of the President holding his office during his pleasure.

As against these arguments, the following considerations were advanced in favour of the adoption of the practice of nomination of Governors by the President:—



(1) In a parliamentary form of Government, the Governor should be the nominal head of the State, and as such he should not be elected. If he is elected directly by the people, he would claim more powers. This would result in a conflict between him and the Chief Minister.

(2) The Governor should be above party labels and should discharge the onerous duties of his office, as an impartial and independent mediator. This is not possible through election which necessarily depends on party support.

(3) There is no possibility of Central interference in a parliamentary form of government, because the Governor cannot exercise any authority on his own initiative, except on the advice of his Council of Ministers.

(4) Lastly, the appointment of a non-party man by the President as Governor fosters a sense of common nationality and promotes a common standard of administrative efficiency and uniformity of policy.

*Qualifications, Salary and Allowances.* Any citizen of India who has attained the age of 35 and who is not a member of the Union or any State Legislature or under the employment of the Central or State Governments is eligible for appointment to the post of the Governor. If, however, a person who is a member of a legislature is appointed as Governor, his seat in the House will be deemed to have fallen vacant from the date of his appointment.

The Governor is provided with a free official residence and a salary of Rs. 5,500 per month, along with such other allowances and privileges as are mentioned in the Constitution. His emoluments cannot be reduced during his term of office.

### Powers of Governors

The powers of the Governor are more or less on the lines of the powers of the President except that he does not enjoy the latter's far-reaching emergency powers. The Governor of Assam enjoys a special position in that he exercises 'discretionary' powers in the administration of tribal areas as an agent of the President.

The powers of the Governor may be classified under



four heads: (a) executive, (b) legislative (c) financial, and (d) judicial.

(a) *Executive Powers.* The executive powers of the State are vested in the Governor and exercised by him directly or through officers subordinate to him. The powers of the Governors extend to matters enumerated in the State legislative list. In the case of matters enumerated in the Concurrent list, the Governor exercises them subject to the executive authority of the President. He is empowered to make rules of business for allocation of work among his ministers. He appoints the Chief Minister, and on his advice other Ministers. He also appoints the Advocate-General and members of the Public Service Commission. The Chief Minister is called upon under the Constitution to keep the Governor informed of all matters of administration in the State and about the decisions of the Council of Ministers. The Governor can require reconsideration by the Cabinet of any decision taken by a minister in person and not considered by the Council of Ministers as a whole.

(b) *Legislative Powers.* The Governor has the right to summon the State Legislature, prorogue either House thereof or dissolve the Legislative Assembly. He has the right to summon joint sittings of the two Houses and to address them in person or to send written messages to them. At the beginning of the session every year he has to deliver an address to the Legislature in which he lays down the policy of his Government for the ensuing year. The members of the House have the right to discuss this address. In matters of legislation, the Governor can give his assent to the bills or dissent therefrom, or return them for reconsideration of the House, or reserve them for the President's approval. If a bill, not being a money bill, is sent back by the Governor for reconsideration by the House and if it is passed a second time, the Governor cannot withhold his assent. His previous consent is necessary for introduction of money bills. The Governor, with the previous permission of the President, is authorized to promulgate ordinances during the period when the State Legislature is not in session. Such ordinances last for a period of 6 weeks only, unless disapproved earlier by the Legislature.



✓ (c) *Financial Powers.* The Governor enjoys certain financial powers also. No money bill can be introduced in the Legislature except with his previous consent. He signs money bills. He causes to be laid on the table of the House or Houses the annual report of the Auditor-General of India and the Public Accounts Committee relating to the expenditure of the State.

(d) *Judicial Powers.* The Governor enjoys the power of granting pardon to persons convicted by courts of law or reducing or commuting their sentences. Such powers extend only in respect of cases in which the Provincial Legislature has power to make laws and do not extend to cases pertaining to Union laws. In this connection, an interesting controversy developed between the Kerala and the Union Government over the commutation of the death sentence of a Communist prisoner by the State Government. The Union Government held that only the President could commute the death sentence in such a case. The controversy was resolved by the President's accepting the advice of the State Government.

### **The Real Position of Governor in the State Administration**

Normally, the Governors act on the advice of their Chief Ministers. Only the Governor of Assam enjoys certain discretionary authority in the administration of Tribal areas and for settling disputes between the Government of Assam and the District Council regarding the share of mining royalties. On the following occasions, however, all enjoy certain discretionary powers: (1) in the selection of the Chief Minister when there is no clear majority behind a party leader,\* (2) in assuming powers of administration between the fall of one ministry and the formation of the next ministry, (3) in agreeing or not to the request of the Chief Minister

\*According to Shri K. M. Munshi, the Governor may have to play an important role in maintaining the stability of the State. A time may come when there will be many parties, when the Premier may fail to bring about a compromise between the parties and harmonise policies during a crisis. At that time, the value of the Governor would be immense and most beneficial to the Ministers themselves, because they will be able to get confidential information and advice from a person who has completely identified himself with them and yet is accessible to the other parties." C. A. Debates, VIII, pp. 643.



for the dissolution of the Lower House, (4) and lastly, in taking over the reins of administration during the period of emergency.

The late Dr. Ambedkar had drawn a distinction between the functions and the duties of a Governor. According to him, the Governor would have no functions to discharge by himself and would have no power to override the ministry on any matter. But he would have the duty to advise the ministry\*, not as the representative of any particular party, but of the people as a whole, with the object of securing an impartial, pure and efficient administration.

The role of the Governor is of a respectable and impartial dignitary, standing above the vortex of party politics and always available to the State Government for consultation and guidance. He is able to contribute to the stability of administration by his friendly advice and co-operation. In the words of Dr. P. K. Sen, "The functions of the Governor shall be to lubricate the machine of the Government, to see that its wheels are going on well by reason not of his interference, but of friendly co-operation."†

#### COUNCIL OF MINISTERS

*Appointment.* Article 163 of the new Constitution lays down that "there shall be a council of Ministers led by a Chief to aid and advise the Governor in the exercise of his functions except when he is required by the Constitution to act in his discretion."

The Governor appoints the Chief Minister and other Ministers are appointed by the Governor on the advice of the Chief Minister (Article 64). They all hold office during the Governor's pleasure, but as the ministers will be collectively responsible to the Legislative Assembly, they will virtually retain office as long as they enjoy the confidence of the Assembly. A Minister must be a member of either House of the Legislature. An outsider can be appointed a Minister for six months. Before the expiry of this period, he must either resign his office or manage to get himself elected

\**Constituent Assembly Debates, Volume VIII, pp. 542.*

†*C. A. Debates, Volume VIII, pp. 46.*



as a member of the State Legislature. The Constitution provides that in Bihar, Madhya Pradesh and Orissa there must be appointed a Minister to look after tribal welfare.

The Ministers receive such salaries and allowances as may be determined by the Legislatures of the States.

*Strength and Organization.* The number of Ministers in State Cabinets is not uniform. It varies from State to State. There are small cabinets as in the Punjab of 7 ministers and big cabinets as in Bengal consisting of 14 ministers. The Councils of Ministers include cabinet ministers of State (only in Utter Pradesh), and deputy ministers. In some States, parliamentary secretaries are also appointed.

State cabinets work on the portfolio system, there being departments such as Finance, General Administration, Home, Food, Civil Supplies, Education, Agriculture, Forests, Medical and Health, Local Self-Government, Public Works, Legislative, Justice, Industries and Labour, Jails, Excise, Information, Co-operation and Development. Every minister is the head of one or more administrative departments of the State and is responsible for their proper working. A Minister's job is not to run the administration but to see that the administration gives effect to the policy laid down by the Legislature.

*Functions.* The Council of Ministers is responsible for formulating and deciding the policies of the State. The Ministers decide the legislative programme of the House and sponsor and pilot bills. They answer questions on the floor of the House and reply to motions of adjournment. They determine the taxation policy of the State and help the Finance Minister in framing the budget. They jointly take decisions on vital matters of policy. They are collectively responsible to the Assembly for policy decisions and individually for the efficient running of their departments. Though technically they are responsible to the Legislature which serves as their master, in actual practice, through their effective leadership of the majority party in the legislature, they exercise complete control over the House.

#### The Chief Minister

*Status and Position.* The powers of the Chief Minister



of the State are a replica of those of his prototype in the Union cabinet. Like the Prime Minister of India, he is the keystone of the cabinet arch, central to its formation, central to its life, central to its death. But it would be wrong to say that he enjoys the same extent of powers and status as the Union Prime Minister.

The latter is the leader of the nation. He enjoys unrivalled position and prestige. He has the solid backing of the majority party behind him. The status of the Chief Minister is largely a matter of personal equation. There are some Chief Ministers who enjoy great prestige, power and standing. If they have the support of a solid majority behind them, their position is unassailable. On the other hand, if they are comparatively new and inexperienced and enjoy only a precarious majority in the Assembly, or have to contend against dissensions within their own party, their position is most unstable and they have to depend on the tender mercies of the party caucus or the support of the party's High Command. Very often, the High Command has to intervene in such States to bring about unity and solidarity in the ranks of the party. Unfortunately, most of our States suffer from this malady. This internal weakness in the party organization and personal rivalries among the leaders tend to detract greatly from the prestige and power enjoyed by the Chief Ministers in States.

*Duties.* Article 167 of the Constitution states that it will be the duty of the Chief Minister to (1) communicate to the Governor of the State the decisions of the Council of Ministers relating to the administrative affairs of the State and proposals for legislation, (2) furnish such information relating to administration and proposals for legislation as the Governor may call for, and submit for the consideration of the Council of Ministers any matter on which a Minister may take a decision without consulting the Cabinet. ✓

The above provisions in the Constitution imply that the Chief Minister is the sole channel of communication between the Cabinet and the Governor and that he is the leader of the Cabinet. In the latter capacity, he is instrumental in enforcing ministerial responsibility. He shall have a say in



choosing his team. No one to whom he is opposed can be appointed a member of his Cabinet. If a particular minister does not agree with him, he must either change his mind or vacate office.

*Relations with the Governor.* The Governor normally exercises his functions in relation to his Council of Ministers as a constitutional head. Although there are no legal fetters binding the Governor to act according to the advice of the Council of Ministers, constitutional propriety demands that he should not override the advice of his Ministry in any matter except in exceptional circumstances. The working of the Constitution during the last seven years has disclosed that there have been no instances of serious conflicts between the Ministers and the Governors. The latter have set up healthy constitutional precedents. Only in Orissa and Kerala did the actions of Governors come in for some adverse comments. In the former State, the Governor, at the conclusion of the 1957 general elections, called upon the leader of the Congress Party to form a Ministry. The Opposition parties said that the defeat of the Congress at the polls was a clear verdict of the electorate against the assumption of power by that party and that they should have been called upon to form an alternative government. The Governor replied by saying that the Congress Party was the single largest party in the Legislature and as such he was duty bound to ask its leader to form the Ministry.

In Kerala, the Governor nominated a representative of the Anglo-Indian community to the Assembly, without consulting the majority party voted to power. The Governor replied by saying that the nomination was made when the Ministry was not yet installed in office. This, however, does not appear to be a convincing explanation.

*Appointment.* The Governor has to choose as Chief Minister a person who is the leader of the majority party in the Lower House. Constitutional precedent demands that the Governor cannot appoint a person as Chief Minister who is not an elected member of the Lower House and who does not command a majority in the Legislative Assembly. However, in 1952, this well-established parliamentary convention



was disregarded in Madras by Shri Sri Prakash, who nominated Shri C. Rajgopalachari as a member of the Legislative Council and then asked him to form a cabinet against the claim of Shri T. Prakasam, an elected member of the Assembly and leader of the United Front. Another unhealthy precedent was set up in Bombay, when Shri Morarji Desai, the defeated candidate for the Assembly, was nominated as a member of the Legislative Council and was invited to form the Ministry.

*Advocate-General.* An Advocate-General is appointed in each State by the Governor to serve as a legal adviser to the State Government and to represent the State in all disputes to which it is a party. He must possess the qualifications required of a judge of the High Court.

His salary and other conditions of service are determined by the Governor and he holds office during the latter's pleasure. He can attend sittings of the Legislature and also take part in its discussions, specially in matters requiring his expert legal knowledge, but he has no right of vote.

#### THE STATE LEGISLATURES

*Two Houses.* Before the reorganisation of States on November 1, 1956, the State Legislatures in Bihar, Bombay, Madras, the Punjab, Uttar Pradesh, West Bengal and Mysore had bicameral Legislatures. After reorganization, Madhya Pradesh and Kashmir have been added to the list. The Upper Houses in such States are known as the Legislative Councils and the Lower House as the Legislative Assemblies. In all other States of the Union, the Legislature consists of only one House known as the Legislative Assembly.

*Reasons for Bicameralism in States.* The framers of the Constitution introduced bicameralism in certain States only as an experimental measure. Some strong sections of public opinion were opposed to this institution as it served only as a stronghold of vested interests, caused delays in progressive legislation and constituted a brake on democracy. But those who stood for retention of second chamber argued that the second chamber in India would be necessary to protect the interests of the people against the hasty and ill-considered legislation of the Lower House. Secondly,



they thought that elderly, experienced and sober politicians and statesmen could be given representation in the Upper House. Such persons usually cannot bear the ordeal of an electioneering campaign. Thirdly, it was maintained that the second chamber would give functional representation to special interests, e. g., graduates, local bodies, teachers, outstanding persons in the fields of art, literature, science and social service, etc.

*Abolition of Second Chambers.* Still, the framers of the Constitution were not fully convinced of the utility of the second chambers in States. They, therefore, gave them very restricted powers and further provided that in case some States desired their abolition, the State Legislative Assembly could pass a resolution by a  $\frac{2}{3}$ rd majority of votes of the members present and voting and by a majority of its total membership, asking Parliament to enact a law for such abolition. Parliament could then pass such an Act. The Constitution lays down that such an Act would not be deemed to be an amendment of the Constitution. A second chamber in a state not having one can be created by a similar process.

### Composition of the Legislative Councils

The Constitution originally provided that the strength of the Legislative Council in a State must not exceed a fourth of that of its Legislative Assembly, but must not be less than 40. The Constitution (Seventh Amendment) Act passed by Parliament in October 1956 provides that the maximum strength of the Councils should be one-third of that of the Legislative Assemblies. Of the total number of members, one-third will be elected by the Legislative Assembly from amongst persons who are not members of the Assembly; one-third by the local bodies, District Boards and Municipal Councils;  $\frac{1}{2}$ th by registered graduates of 3 years' standing and  $\frac{1}{2}$ th by teachers of higher secondary schools. The remaining one-sixth will be nominated by the Governor and will consist of persons having special knowledge of matters such as literature, science, art, the co-operative movement or social service. All elected members shall be chosen by the single transferable vote and through proportional representation. In order to qualify for membership



one must be a citizen of India and must be not under 30 years of age. The strength of the Legislature in different States in accordance with the Legislative Councils Act, 1957 is given below :—

## STRENGTH OF LEGISLATIVE COUNCILS

Andhra	90	Uttar Pradesh	108
Bihar	96		
Bombay	108	West Bengal	75
Madras	63	Mysore	63
Punjab	51	Madhya Pradesh	90
Kashmir	36		

The Legislative Council is a permanent body and is not subject to dissolution. One-third of its members, however, retire every two years.

**Legislative Assemblies**

The Legislative Assembly of each State shall be elected by direct election on the basis of adult franchise, the total number being in no case more than 500 or less than 60. Seats shall be reserved for the representatives of the Scheduled Tribes and Scheduled Castes. The Governor will also be empowered to nominate members of the Anglo-Indian community to the Assembly, in case he feels that that community is not sufficiently represented in the House.

*Term.* The term of the Assembly is five years. At the expiry of this term, the Assembly will stand automatically dissolved. At a time when the proclamation of emergency is in operation, the term of the Assembly can be extended by one year at a time, but in no case beyond six months after the proclamation has ceased to operate.

*Qualification for Membership.* The qualifications and disqualifications for a member of the Assembly are the same as those in the case of the House of the People. A member must be a citizen of India and must not be under 25 years of age.

*Composition.* The following table gives the strength and composition of the Legislative Assemblies in different States :—



STATES	Total	Number of Seats reserved for	
		Scheduled Castes	Scheduled Tribes
Andhra Pradesh	301 <sup>4+14</sup>	43	11
Assam	108 <sup>15/12</sup>	5	26
Bihar	318 <sup>3</sup>	40	32
Bombay	396 <sup>20</sup>	43	31
Kerala	126 <sup>12/12</sup>	11	1
Madhya Pradesh	288 <sup>412</sup>	43	54
Madras	205 <sup>8/12</sup>	37	1
Mysore	208 <sup>7/12</sup>	28	1
Orissa	140 <sup>11/12</sup>	25	29
Punjab	154 <sup>10/12</sup>	33	Nil
Rajasthan	176 <sup>9/12</sup>	28	20
Uttar Pradesh	430 <sup>15</sup>	89	Nil
West Bengal	252 <sup>6/12</sup>	45	15
Jammu and Kashmir	75 <sup>14/12</sup>	—	—
Total	3177	470	221

*Sessions.* The Constitution requires that the House or Houses of the State Legislature must meet at least twice a year and not more than 6 months must elapse between two sessions. The Governor has power to dissolve the Legislative Assembly before the expiry of its normal term of five years. He cannot dissolve the Legislative Council, which is a permanent body. The Governor can summon the House or Houses to meet from time to time, and prorogue them.

*Address by the Governor.* The Governor at the commencement of each session in a new year may summon and address the two Houses of the Legislature jointly or severally. In this 'annual address' he lays down the policy of his Government for the ensuing year. It is later discussed by the members. The address is finally voted upon in the form of a resolution of thanks to the Governor.

*Quorum.* The quorum for the meeting of the Legis-



lature has been fixed  $\frac{1}{10}$ th of the total membership of the House or 10, whichever is greater.

*Conduct of Business.* The State Legislatures regulate their own business. Each House chooses its presiding officers, known as Speaker and Deputy Speaker in the Legislative Assembly and Chairman and Deputy Chairman in the Legislative Council. These officers act in a most independent and impartial manner and they enjoy the same position and power as the presiding officers of the Union Parliament. Their salaries are determined by the Legislature and are charged on the Consolidated Fund of the State.

*Powers, Privileges and Immunities.* The powers, privileges and immunities of the Legislatures, their committees and their members are the same as those in the case of the Union Parliament. The officers and members of the Legislature, in the discharge of their duties, are immune from the jurisdiction of the courts. Members of the Legislative Assembly and the Legislative Council are entitled to receive such salaries and allowances as are fixed by the Legislature.

#### Functions and Powers of States Legislatures

The Legislature of a State has exclusive power to make laws for the whole or any part of the State in respect of subjects mentioned in the State Legislative List and has also power to legislate on subjects in the Concurrent list. But, in the case of the latter, if there is a conflict between a law passed by the Union Government and that by the State Government, the Union law prevails.

*Restriction on the Legislative Powers of States.* As a general rule, the States enjoy complete autonomy within their respective spheres. But under special circumstances, their powers are subject to the following limitations :

(1) Laws passed by the State Legislature but reserved by the Governor for the President's assent become inoperative if the President does not give his assent. Such laws relate to acquisition of property by the State, laws on concurrent subjects repugnant to Union laws on the subjects, and laws providing for taxation on the sale and purchase of commodities declared essential by Parliament. (2) If the



Council of States passes a resolution by not less than  $\frac{2}{3}$ rd of the members present and voting that it is necessary and expedient in the national interest for Parliament to legislate on a subject included in the State List, then Parliament shall acquire the right to legislate on such a subject or subjects. (3) The President can authorize Parliament to make laws on a State subject during the operation of a proclamation of national emergency. (4) The Constitution lays down that certain bills cannot be introduced or moved in the State Legislature without the previous sanction of the President. This condition applies to bills which seek to impose restrictions on the freedom of trade, commerce or intercourse with other States. (5) In the event of a breakdown of the constitutional machinery in a State, the President may vest all the powers of the State Legislature in Parliament.

The financial autonomy of the States is also limited by the fact that while the Union Government can raise money in India or outside on the security of the General Consolidated Fund within limits fixed by the law of Parliament, a State Government cannot borrow outside the territory of India. Normally, a State Government may raise loans on its own initiative and without Central intervention, but it cannot do so without the Union Government's consent.

### Legislative Procedure

The procedure for passing of money and other bills in the State is almost the same as that in the Union Parliament. Ordinary bills may originate in either House. They must be passed by both Houses without amendments or with such amendments as are agreed to by both Houses.

A bill in the State Legislature has to pass through the same stages as in the Union Parliament, *viz.*, introduction; publication in the official gazette; discussion on the general principles of the bill (first reading), reference to a select committee and examination by it; report of the committee and general discussion of the Report by the House (second reading, first stage); clause by clause discussion, and moving of amendments (second reading, second stage); and finally, the passing of the bill (third reading),



### Disagreement between the Houses

The method followed for resolving conflicts between the two Houses of State Legislatures is different from that followed in the Union Parliament. The Upper House can only make such amendments to a bill as are acceptable to the Assembly. If a bill passed by the Assembly is rejected or finally disagreed to by the Council, or if the Council takes no action on it, then after a lapse of three months, the Assembly can pass it a second time. After this, the bill is again sent to the Council and if it takes no decision, the bill will be deemed to have been passed after a lapse of one month from the date of presentation to the Council a second time. Thus, the Council can interpose a delay of not more than four months on ordinary legislation. In regard to money bills, it cannot delay their passage beyond 14 days. The procedure for financial matters is the same as that in the Union Parliament.

*Governor's Assent.* After a bill has been passed by both the Houses, it is presented to the Governor. The latter may give his assent to the bill or withhold the same. If he withholds his assent, he shall send the bill back to the Legislature for reconsideration. If the Legislature passes the bill again, he shall be obliged to assent to it.

### Select Bibliography

Constituent Assembly Debates, Volume VIII.

Annual Report of the Ministry of States.

D .N. Sen : From Rajya to Swaraj, Chapter 12, pp. 428-479.



## CHAPTER 24

### THE UNION JUDICIARY AND HIGH COURTS IN STATES

#### Need for Federal Judiciary

There is no better test of the excellence of a government than the impartiality, independence and efficiency of its judiciary. In a federal polity like India, the existence of a Supreme Court is essential to act as interpreter and guardian of the Constitution, as a final tribunal to settle the disputes arising between the component units of the Federation and as a protector of the fundamental rights of the citizens granted to them by the Constitution.

#### Unified Judiciary and Legal System

Notwithstanding the fact that India has a federal polity, the Constitution establishes a unified integrated judiciary for the whole country and a common system of law.\* At the apex of the judicial system of the country is the Supreme Court of India. Below it are the High Courts established in constituent States, and the subordinate Courts. In other federations like the U. S. A. and Switzerland, there is dual system of courts, namely, Federal Courts and State Courts, which interpret the Federal laws and State laws, respectively. In India, uniformity in fundamental laws, civil and criminal, has been preserved. The Civil Procedure Code, the Criminal Procedure Code, the Indian Penal Code, the Evidence Act, etc., are included in the Concurrent List of legislation and such laws are administered uniformly by the Courts throughout India.

#### The Constitution of the Supreme Court

The Constitution establishes a Supreme Court of India, which consists of a Chief Justice and 10 other Judges.

---

\*Explaining the nature of the Indian judicial system, Dr. Ambedkar said in the Constituent Assembly : "The Indian Federation, though a dual polity, has no dual judiciary at all. The High Courts and Supreme Court form one single integrated Judiciary having jurisdiction and providing remedies in all cases under the constitutional law, the civil law, or the criminal law. This is done to eliminate all diversities in a remedial procedure."



Under the Constitution the number of Judges was fixed at 7, but Parliament was given the authority to increase the number of Judges, if considered necessary. Under this clause, the number of judges was increased to 10 in 1956.

*Appointment.* The Chief Justice is appointed by the President of India after consultation with such Judges of the Supreme Court and High Courts as he may deem necessary. The President must consult the Chief Justice of India on the appointment of other Judges.

#### **Qualifications for the appointment of Judges of the Supreme Court**

To be appointed as a Supreme Court Judge, a person must be a citizen of India and must have been for at least five years a judge of a High Court or an advocate of a High Court of at least ten years' standing or, in the opinion of the President, a distinguished jurist.

#### **Provisions for ensuring independence of the Supreme Court Judges**

*High Salary not subject to vote of Legislature.* Every judge is paid a high salary to maintain his status and dignity. The Chief Justice of India is paid Rs. 5,000 per month, while the other judges are paid Rs. 4,000 each. In addition, they get free residential accommodation. Their salaries and allowances cannot be altered to their disadvantage during their tenure of office. This can, however, be done in case of a grave financial emergency declared by the President. The administrative expenses of the Supreme Court are charged on the Consolidated Fund of India and are not subject to the vote of the Legislature.

*Security of Tenure.* The Judges of the Supreme Court enjoy security of tenure. They cannot be removed from office except by an order of the President, and that also on the ground of proved misbehaviour or incapacity, supported by a resolution adopted by a majority of total membership of each House and also by a majority of not less than two-thirds of the members of that House present and voting. Judges hold office until they reach the age of 65 years.

*Oath to work fearlessly.* Before assumption of office, the judges have to take an oath to perform their duties fearlessly and to uphold the Constitution.



*Immunity from Criticism.* The Judges of the Supreme Court cannot be criticised even by members of Parliament. After retirement, a Judge of the Supreme Court may not practise in any Court of law or before any authority in India.

*Powers to make rules to regulate their Procedure.* The Supreme Court is given full powers to make rules for regulating its practice and procedure and to take effective steps for the enforcement of its decrees and orders.

The above provisions have been made in the Constitution to ensure their impartiality and independence.

### **Powers of the Supreme Court**

The Supreme Court of India enjoys wider powers than similar courts in other federations. It is a court of record and has all the powers of such a court including the power to punish offenders for contempt of court. It has original, appellate and advisory jurisdiction, and the powers to protect the fundamental rights of citizens.

*Original Jurisdiction.* The Supreme Court's original jurisdiction to the exclusion of any other court extends to disputes (a) between the Government of India and one or more States; (b) between the Government of India and one or more States, on the one hand, and one or more States, on the other; or (c) between the States *inter se*.

As in Australia, the original jurisdiction of the Supreme Court of India does not extend to disputes between citizens of different States or between a State and a citizen of another State. Where an individual has a claim against the Government of India, the case must, in the first instance, go to the local courts. Such disputes can come up to the Supreme Court only in appeal. The dispute relating to the original jurisdiction of the Supreme Court must involve a question of fact or law on which the existence of a legal right depends. A legal right is defined 'as any advantage or benefit which is in any manner conferred upon a person by a rule of law.' It is a right recognised by law and capable of being enforced by the power of the State.

*Exclusion of Jurisdiction of Supreme Court.* The Supreme Court has no original jurisdiction in disputes between indi-



viduals, between associations or local bodies. It cannot also investigate a dispute arising out of any treaty or agreement which was entered into before the commencement of the Constitution. Parliament may by law exclude the jurisdiction of the Supreme Court in disputes between States with respect to the use, distribution or control of waters of any inter-State river or river valley. In such disputes, different modes of adjudication may be prescribed. The Supreme Court shall also not have jurisdiction in matters referred to the Finance Commission or regarding adjustment of certain expenses between the Union and the States.

### Appellate Jurisdiction

The appellate jurisdiction of the Supreme Court is three-fold : (1) Constitutional (2) Civil, and (3) Criminal.

*Constitutional.* In constitutional matters an appeal would lie if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. If the High Court refuses to give the certificate, the Supreme Court may grant special leave for appeal. In the Election Commission *vs.* Saka Venkata Rao (1953), a point was raised as to whether appeal lay to the Supreme Court in a constitutional matter under Article 132 from a decision of a single Judge. The Supreme Court answered the question in the affirmative.

*Civil.* In civil matters an appeal shall lie to the Supreme Court if a certificate is granted by the High Court, fulfilling three conditions : (1) the subject-matter of the suit is not less than that of Rs. 20,000; (2) the decision of the High Court involves some claim or question regarding the property of such value; (3) the case is a fit one for appeal.

*Criminal.* There are two modes by which appeals in criminal matters lie from the decision of a High Court to the Supreme Court, *i. e.*, (i) without a certificate of High Court; (ii) with a certificate of the High Court.

(i) *Without certificate.* An appeal lies to the Supreme Court without a certificate, if (i) the High Court has reversed an order of acquittal of an accused and sentenced him to death; (2) if the High Court has withdrawn for trial before



itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death.

(ii) *With certificate.* An appeal lies to the Supreme Court from a decision of High Court in a criminal proceeding if the High Court certifies that the case is a fit one for appeal to the Supreme Court.

Parliament can, by further passing an Act, extend the jurisdiction of the Supreme Court in criminal matters.

#### 4. Advisory Jurisdiction

One salient feature of the Supreme Court in India is its consultative role. In England the Judicial Committee of the Privy Council discharges this duty. The Supreme Court of Canada also gives advice to the Governor-General-in-Council on important constitutional questions referred to it. But the American and Australian Supreme Courts are hostile to this idea of giving advice, and have refused to give opinions on abstract legal questions. Keith favours this advisory jurisdiction of a federal court, because according to him, besides settling a point, it saves time.\*

According to Article 143, the President of India is empowered to refer to the Supreme Court any question of law or fact of public importance. Under this jurisdiction even those disputes which involve an interpretation of the treaties and agreements of former Indian States can be referred to the Supreme Court for its opinion.

#### 5. Jurisdiction in matters of Fundamental Rights

The Supreme Court is also the guardian of the liberties and fundamental rights of citizens. Article 32 (1) lays down the writ jurisdiction of the Supreme Court. It says, any person whose rights guaranteed by the Constitution are affected or infringed can move the Supreme Court by appropriate proceedings for the enforcement of those rights. The Supreme Court can issue orders or writs including writs in the nature of *habeas corpus*, *certiorari*, *mandamus*, *prohibition*, or

---

\*Responsible Government in British Dominions, Vol. II, p. 750.



*quo warranto* whichever is appropriate for the enforcement of these rights.\*

## 6. Revisory Jurisdiction

The Supreme Court enjoys wide residuary and discretionary powers under Article 136 of the Constitution. These powers may be invoked by it in granting special leave of appeal from any judgment or decree *in any cause of matter whatever of any court or tribunal of India*, except court martials. In the *Bharat Bank vs. Employees of the Bharat Bank* (A. I. R. 1950 S. C. 108; 1950 S. C. R. 459), the question was raised if the determination by an industrial tribunal set up under the Industrial Disputes Act, 1947, was open to appeal to the Supreme Court under Article 136 of the Constitution, the majority of judges answered the question in the affirmative.

## 7. Enlargement of the Jurisdiction of the Supreme Court

Parliament is authorised to invest the Supreme Court with additional jurisdiction with respect to the enforcement of the matters enumerated in the Union List. The Court may be given all the supplementary powers as are necessary for the due discharge of its functions.

## Comparison of Supreme Court of India with Tribunals in other Countries

The Supreme Court of India enjoys a unique position in the judicial systems of the world. In the words of Shri M. C. Setalvad, India's Attorney-General, "The jurisdiction and powers of Supreme Court are wider than those

\*1. *Habeas Corpus* provides a remedy for a person wrongfully detained. If there is no valid reason for detention the Court immediately orders the release of the detained person.

2. *Certiorari*. This is a writ issued by a Superior Court to an inferior court requiring that record of proceedings in some matter pending before the Court should be transmitted before the Superior Court to be dealt with as the subordinate court is acting without jurisdiction.

3. *Prohibition*. This is a writ issued by a superior court to an inferior court preventing it to act without jurisdiction.

4. *Mandamus*. It is an order to a person to do that which it is his duty to do.

5. *Quo warranto*. It is issued to restrain a person from acting in a public office beyond his legitimate authority.



exercised by the highest court of any country in the Commonwealth or by the Supreme Court of the United States." It will be worth-while to compare the position and powers of the Supreme Court of India with those of the American Supreme Court and other Supreme Courts in Commonwealth countries.

*Jurisdiction.* The original jurisdiction of the Supreme Court of the U. S. A. and of the High Court of Australia is wider than that of the Supreme Court of India. Besides disputes between constituent units of the Federation, the Supreme Court of the U. S. A. has jurisdiction in cases affecting ambassadors, other public ministers and consuls. Originally, the jurisdiction of the U. S. Supreme Court also extended to disputes between a State and citizens of another State, but Amendment 11 has modified this law by excluding from the jurisdiction of the Supreme Court any suit initiated against a State by a citizen of another State or of a foreign State. The Australian High Court has jurisdiction not only in regard to controversies in which a State is a party, but also cases affecting ambassadors and public ministers and disputes between States, or between residents of States. The Canadian Supreme Court has no original jurisdiction. The Indian Supreme Court has no original jurisdiction in disputes between residents of different States or between a State and a resident of another State.

The appellate jurisdiction of the Supreme Court of India is wider than that of the American Supreme Court or perhaps any other Supreme Court in the world. The appellate powers of the Supreme Court of the U. S. A. are subject to regulation by Congress.\* The appellate jurisdiction of this Court is now governed by the Jurisdictional Act of 1927 as amended in 1937. It is limited to constitutional cases (1) in which the State Supreme Court has decided against the validity of some statute or treaty of the United States or

\*Inaugural speech, 28th January, 1950.

†In 1867 the Radical Republicans in control of Congress rushed in a bill repealing the appellate jurisdiction of the Supreme Court and proceeding on any appeal already before it. This happened when the decision about the constitutionality of *Ex Parte Mc Cardle* case was pending in the court.



decided in favour of a State statute, violating the Constitution, or (ii) in cases in which a United States circuit court of appeal has held a State statute to be in violation of the Constitution, treaties, laws or treaties; or (iii) to cases in which the Supreme Court by its own decisions has ruled that it would not review legislation alleged to be unconstitutional if the loss or damage resulting from it amounts to not less than 3000 dollars. Therefore, the U. S. Supreme Court has no appellate jurisdiction in civil and criminal cases as such.

The Canadian Supreme Court hears appeals in civil and criminal cases from provincial courts. It also does so in constitutional cases.

The High Court of Australia is the final court of appeal on constitutional questions only.

The Indian Supreme Court's authority to hear appeals extends to constitutional issues as well as civil and criminal appeals in specified cases. Its right to grant special appeals from decisions of all tribunals is practically unlimited, excepting from *court martials*. Further, the Parliament is empowered to invest it with more powers.

As a tribunal for deciding the constitutionality of laws passed by the federal and State Legislatures, the powers of the U. S. Supreme Court are wider than those enjoyed by the Indian Supreme Court. The Federal Courts in the Commonwealth countries and the Supreme Court of India have the power to interpret the Constitution and determine conflicts of authority arising between the Union and the States. But in interpreting the law the judges cannot examine, scrutinise and adjudicate upon the policy underlying the law. They are simply to ascertain whether the law brought to their notice has been enacted by the authority authorized to enact it. In the U. S. A. it is not so. The Supreme Court there is competent not only to examine the legislative competence of the Legislature which has passed the law, but also to apply to the law the test of 'natural justice', *i. e.*, 'inherent goodness or badness' of the law. In other words, in America the Supreme Court acts like a super-legislature. Throughout the course of her history, she has established her supremacy over the other organs of the Government. In the words of Chief



Justice Hughes, "We are under a Constitution but the Constitution is what the judges say it is." The American Supreme Court sits almost as a 'continuous constitutional convention' and can amend the basic law without submitting its proposals for any ratification. In India there is no judicial supremacy in the sense that it prevails in the U. S. A. Instead we have the supremacy of the Parliament, subject to constitutional limitations. The Supreme Court of India will invalidate a law if it is in contravention of the constitutional provisions but it is not competent to scrutinize the policy underlying the law.\*

However, the scope of authority of declaring upon the constitutionality of legislative enactments exercised by the Supreme Court of India is greater than that in Canada and Australia. This is due to the fact that there is enumeration of fundamental rights in the Indian Constitution. Fundamental Rights granted to citizens of India are subject to 'reasonable restrictions'. The Supreme Court has to ascertain what is reasonable and what is not in the light of the principles of natural justice. Similarly, the Court has been influenced in its decisions by the Directive Principles of State Policy and has given its judgments to uphold them. It held the U. P. Zamindari Abolition Act of 1951 *intra vires*. Similarly, it held that the Bihar Land Reforms Act of 1950 (in the State of Bihar *versus* Sir Kameshwar Singh) was valid, inasmuch as it was enacted for a 'public purpose' within the meaning of the Constitution. The Supreme Court has not exercised a curb on Parliament but has served as a check on executive excesses and safeguarded the liberties of citizens against the abuse of powers vested in administrative tribunals which have been established in the country with the expansion of the sphere of governmental activity.

---

\*In Gopalan's case Chief Justice Mahajan observed : "It may be observed that an Act cannot be declared void because, in the opinion of the Court, it is opposed to the spirit supposed to pervade the Constitution but not so expressed in words. It is difficult on any general principles to limit the omnipotence of the sovereign legislative power by judicial interpretation except in so far as the express words of a written Constitution give that authority."



## Judicial Review of Legislation by the Supreme Court

The term 'judicial review' implies the power exercised by the courts of determining, in cases actually before them, whether legislative statutes and executive or administrative acts are in conformity with the provisions of the Constitution or not.

The exercise of the power of judicial review by the Supreme Court of the U. S. A. has given it the pivotal position which no tribunal in any other country enjoys. The scope for judicial review in India is much less because our Constitution is very detailed. It does not leave much scope for judicial interpretation. The volume of litigation over the last six years has, therefore, been astoundingly small. The Supreme Court has had to protect the Union against attempts made by the States at securing sources of revenue assigned to the Union. It, therefore, held parts of the Sales-Tax Acts of Travancore-Cochin and Bombay invalid. These Acts levied sales tax on goods in the course of export or import on all sales effected out of the States.\* The Supreme Court also held the Bihar Sales Tax Act (in the Bengal Immunity case) void in so far as it purported to tax sales or purchases that took place in the course of inter-State trade and commerce.

## Judicial Review and Fundamental Rights

The central problem in political science is not only to establish a government but to provide safeguards against abuse of authority by the executive. The theory of Fundamental Rights is based on the theory of limited government and is a product of the philosophy of the American and French Revolutions. The American Bill of Rights provides safeguards for individuals both against executive despotism and majority tyranny. The United States Supreme Court has exercised the power of judicial review of legislation and administrative actions from the very beginning. In the words of James Madison: "In the United States, the great and essential rights of the people are secured against legislative as well as against executive ambition. They are secured, not by laws paramount to prerogative, but by constitutions para-

\*A. I. R. 1952 S. C. 366; 1952 S. C. R. N. 12



mount to laws". The Supreme Court of the U. S. A. is the custodian of the liberties of the people guaranteed to them by the Constitution. The Indian Supreme Court is also given similar powers and is charged with the responsibility of ensuring the liberties of citizens against official encroachment. The Constitution of the United States provides procedural as well as substantive curbs on legislative enactments and administrative actions encroaching upon basic liberties of citizens. It has a due process clause which provides that no person shall be deprived of life, liberty, or property 'without due process of law'. In the Indian Constitution there is no 'due process of law.' Instead we have 'procedure established by law', which merely means that the Court can only investigate whether the legal procedure prescribed by the Constitution for passing law has been followed. It cannot enquire into the question in accordance with concept of 'natural justice'. In other words, the Indian Supreme Court does not scrutinise the inherent goodness and badness of a law, though in a restricted sense it sometimes goes behind and enquires into the reasonableness of particular State actions. In the leading case of *Harla versus Rajasthan*\* decided in 1951 by the Supreme Court, it set aside a conviction of a person for violation of a State law relating to dealings in opium on the ground that the law was not published in the *Gazette*. The Court held that natural justice demanded the promulgation or publication of the law. Similarly, the Supreme Court has applied the test of 'natural justice' in ascertaining whether restrictions imposed on the rights of citizens under Article 19 are reasonable or not.

There is no doubt that, in spite of some inherent limitations, the Supreme Court of India has justified its role as the guardian of the liberties of the citizens. It has compelled the executive and administrative officials to respect the rights of the citizens granted to them by the Constitution. The following cases decided by the Court bear this out.

*Right to Personal Liberty.* In *Gopalan vs The State of Madras*,† the Court held that Section 14 of Preventive Deten-

\*14 Supreme Court Journal 735

†A. K. Gopalan vs. the State of Madras (1950) S. C. R. 88 May 19, 1950.



tion Act, 1950, was *ultra vires* because it did not permit the disclosure to the court of the grounds on which a particular accused had been detained. The Supreme Court has always held that it is incumbent on the detaining authority to inform the persons detained under the Preventive Detention Act of the grounds on which the order has been passed against them. It is further necessary that adequate opportunity should be afforded to such persons of making a representation against such an order as required under the provisions of Article 22 (4) of the Constitution.

In *Bhardwaj vs Delhi*,\* the Court insisted that the detainee was entitled to a clear disclosure of grounds on which he was detained and not merely vague accusations.

*Freedom of Speech and Religion.* The Supreme Court has also jealously guarded the citizens 'right of freedom of speech, press and religion.' In the case of *Brij Bhushan vs. Delhi State Government*,† the Court held that the imposition of precensorship on a journal was a restriction on the liberty of the press which is guaranteed by Article 19 (1)(a).‡ In another case, *Soren vs. State*, Justice Das emphasised that it was necessary to protect the right of free speech. He said, "...Speeches made must be considered as a whole and interpreted in a fair, free and liberal manner. Not too much of importance should be given to isolated passages or to strong expressions of opinion here and there." It held the alleged speech of the accused as not falling within the orbit of statutory prohibition and, therefore allowed the appeal.

*Right to Religion.* The Supreme Court held in a recent case that section 56 of the Madras Hindu Religious and Charitable Acts, 1951, which empowered the Commissioner, at any moment, to deprive the Mahant of his right to administer the trust property was opposed to the provisions of Article 26(d).§

*Cultural and Educational Rights of Minorities.* The Supreme Court has also guarded the cultural and educational rights.

\*16 S. C. J. 444.

†13 S. C. R. 425

‡A. I. R. 254

§Commer H. R. E. V. L. T. Swamai A. I. R. 1954



of minorities. In the State of Bombay *vs.* the Bombay Education Society\* case, it held that a minority like the Anglo-Indian community had the fundamental right to conserve its language by establishing educational institutions of its choice.

*Right to Property.* The Supreme Court has maintained a balance between the legitimate rights of the propertied class and the needs of a Welfare State. It has held that private property can be acquired only for a public purpose. In the State of Bihar *vs.* Kameshwar Singh case, the court held that a law aiming at elevating the status of tenants by conferring on them *bhumidhari* rights fulfilled a public purpose.

### Supreme Court and Delegation of Powers

‘Delegated Legislation’ means the power delegated to the executive to make rules under an Act passed by the Legislature. It is a matter of common experience that there has been an enormous growth of delegated legislation in recent years. This is mainly due to the change in the concept of the State from a police to a welfare institution. Nowadays Parliaments are so overburdened with work that they cannot provide all details in a given piece of legislation. The executive is, therefore, given the power to make rules under the broad framework of the Act. It has been felt that there is a great need of safeguarding the citizens against the abuse of delegated legislation. The Supreme Court of India held by a majority judgment in *re Delhi Laws Act, 1912*,† that “essential powers of legislation cannot be delegated.” It said, the Legislature must lay down legislative policy. The Court will interfere if delegation is “of such an indefinite character as to amount to abdication.”

In another case, *Narain vs. Uttar Pradesh*,‡ it held that the provision of a law granting a licensing authority the power to grant or refuse a licence for ‘reasons to be recorded’ was invalid, as it imposed unreasonable restrictions on a person’s right to carry on any trade or business.

\*State of Bombay *vs.* Bombay Education Society, A. I. R. 1954 S. C. 561.

†A. I. R. 1951 S. C. 332.

‡S. P. J. 238.



It would thus appear that the Supreme Court has played a distinguished role as the custodian of the interests of the citizens. It is discharging its onerous duties impartially and independently and has not hesitated in declaring legislative enactments void which were contrary to the provisions of the Constitution or which encroached upon the liberties of the citizens. There appears, however, no possibility for the Supreme Court of India to grow into a third chamber as in the U. S. A. But it can be trusted to act as a watch-dog of the interests of the citizens, so long as the Constitution is not unduly tampered with.

#### THE HIGH COURTS

The Constitution establishes a High Court in each of the constituent States. The High Court stands at the apex of the State judicial organization. It is a court of record and can punish persons for contempt of court.

*Constitution of High Courts.* Every High Court consists of a Chief Justice and such other Judges as the President may, from time to time, determine, subject to their not exceeding a maximum limit which the President may fix by order.

*Qualifications and Conditions of Service.* A person shall not be qualified for appointment as a judge of a High Court unless he is a citizen of India and has held a judicial office in the territory of India for at least ten years, or has *served* as an advocate for at least ten years in one or more High Courts.

The appointment of High Court Judges is made by the President in consultation with the Chief Justice of India, the Chief Justice of the High Court concerned, and the Governor of the State. Similarly, the President appoints the Chief Justice of a High Court in consultation with the Chief Justice of India and the Governor of the State concerned.

*Emoluments.* The Chief Justice of a High Court is paid Rs. 4,000 per month, and the other judges are paid Rs. 3,500 per mensem. They hold office during good behaviour and retire at the age of 60. The Constitution ensures their independence by charging their salaries and allowances on the



Consolidated Fund of the State and hence making them non-votable. They have to take an oath before entering upon their offices, affirming that they will bear true faith and allegiance to the Constitution of India and will perform the duties of their office without fear or favour, affection or ill-will and will uphold the Constitution and the laws. They cannot be removed from office except on the ground of proved misbehaviour or incapacity by the President on an address of Parliament adopted separately by each House by a majority of its total membership as well as a two-thirds majority of those present and voting.

Formerly a retired High Court Judge could not practise in any court in the territory of India, but with the amendment of Article 220, a retired High Court Judge can practise before the Supreme Court or any High Court other than the one in which he acted as a judge.

*Jurisdiction and Powers of High Courts.* Provision has been made for the establishment of common High Courts for two or more States in the new reorganized States which have come into being from November 1, 1956.

*Jurisdiction.* The High Courts have original jurisdiction in admiralty, probate, matrimonial and contempt of court cases. The High Courts of Calcutta, Bombay and Madras also enjoy original jurisdiction in civil and criminal matters. In other States, they have mostly appellate jurisdiction. They hear appeals in civil cases when the subject matter of a suit is above a certain limit. In criminal cases they hear appeals in all important cases. The High Courts are also given power to issue writs for the enforcement of Fundamental Rights and other matters; (ii) power of superintendence over all courts or tribunals, except military tribunals; and (iii) power to take over cases from subordinate courts regarding the interpretation of the Constitution.

#### Select Bibliography

- Carr, R. K.* : Supreme Court and Judicial Review.
- Basu D. D.* : Commentary on the Constitution of India.
- Basu D. D.* : Cases in Indian Constitution, Vol. I, II.
- Supreme Court Journal Vols. 1950-1955
- All India Reporters (Supreme Court Volumes, 1950-1956.)



## CHAPTER 25

### THE SERVICES UNDER THE UNION AND THE STATES

The widening scope of governmental activity under the complex character of a Welfare State has increased the importance of civil services as an integral part of the governmental structure in a country. The ministers in charge of the administration who have to formulate the policy of the Government are in most cases amateurs. Their success largely depends on the extent of efficiency and promptness with which the administrative personnel carry out their directives and also on the quality of expert advice received by them on the issues that come up for decision. The Cabinet must rely upon the civil servants for their expert knowledge of substantive, procedural and financial matters. Without such advice, the functioning of the Government would not only be stupid and inefficient, but also impossible. It is, therefore, of vital importance in a democracy that the services of qualified men and women honest, upright, fearless and devoted are secured to man the various offices under the Government. The latter should assure security of tenure, good conditions of work and reasonable emoluments to the members of the services.

#### **Growth of Administrative Discretion**

Of late, a tendency has been noticed that more and more power is concentrating in the hands of administrative officers. This is partly due to the tremendous expansion in the scope of State activity and partly due to the extreme pressure of work with our legislators. With the march of socialism and the development of the concept of the Welfare State, the functions which modern States are called upon to perform have greatly expanded. So also has there been a corresponding expansion in the business of the Legislatures. The Parliaments of yore used to meet only once or twice a year for short periods, lasting a month or fifteen days. Most modern Parliaments now meet for six to eight months in the year, in two or three consecutive sessions. The work of Parliamentarians is becoming almost a whole-time job. And yet, the Legislatures find it difficult to dispose of all their work. This



necessitates the transfer of more powers into the hands of administrative ministries. Laski has called it the growth of administrative discretion. He says, "Administrative discretion is the essence of the modern state". This means that what forms a legitimate sphere of activity of the Legislature is now gradually forming a part of the duties of the administrative offices. This is also called the 'development of subordinate legislation.' The latter term means that the Legislature lays down general principles in the Act and leaves the details to be worked out by the executive departments. This has led to a tremendous accession of powers to the bureaucracy in the legislative field. This kind of delegated legislation in the United Kingdom is of three types :

(1) Provisional orders, which are issued on requisition by local bodies, and which require confirmation by statutes afterwards;

(2) Orders issued under the authority of a clause and which are required to be placed on the table of the House for a stated number of days;

(3) Orders which are not required to be laid on the table but which automatically become law, when issued by the minister.

Parliament has theoretically the right of annulling these orders, but it is rarely done for that would involve the question of confidence in the Cabinet. In England, these Orders and Regulations infringe the spirit of the rule of law. They cannot be invalidated by the Courts by virtue of parliamentary sanction. During World War I and II there was a rapid rise in the volume of delegated legislation. There were all kinds of regulations. After the cessation of hostilities also the executive retained for considerable time this rule-making authority. Powers which were conceived at the time of impending military peril were perpetuated and were used for various purposes.

*Growth of Quasi-Judicial Powers.* Another tendency leading to the growth of administrative discretion was the growth of quasi-judicial powers exercised by the executive officials. Such powers mean the authority vested in the hands of the administrators to interpret Acts and to impose penal-



ties on the citizens in accordance with them for their failure to perform certain duties, as for example, under Municipal or Education or Public Health Laws. Lord Hewart, Chief Justice of England, warned his countrymen in his book, 'The New Despotism' (1929) that the liberties of the people of England were being endangered by the growth of discretionary powers of the executive in the legislative and judicial fields. The immediate cause for the growth of administrative law in England is the vast extension in the state and municipal activities which have taken place during the past 50 years. Acts of Parliament have conferred quasi-judicial powers on government departments relating to public health, housing, town and country planning, social insurance, education, motor transport services, pensions, national health service, care of delinquent children, agriculture, nationalised industries and services. The executive departments of the Government are now empowered to determine controversies arising in connection with the new social services.

A similar development has taken place in the U. S. A. with the expansion of State activity. A large number of administrative tribunals have sprung up dealing with controversies relating to public utility undertakings, trade practices, workmen's compensation and industrial disputes, etc. They provide cheaper methods of adjudication than courts of law.

#### **Growth of Administrative Discretion in India**

India has followed the example of other modern States in the matter of the delegation of legislative powers to executive departments. This has been necessitated by her assuming added functions and responsibilities as a Welfare State. The rule-making powers under Acts of Parliament may be classified under three heads :

(1) Acts under which rules, regulations, etc., are framed by the Government Departments and need not be placed before the House or Houses of Legislature, *e. g.*, the Destructive Insects and Pests Act, 1914; the Indian Tariff Act, 1934; the Industrial Finance Corporation Act; the Employees Provident Fund Act, 1952; the Mines Act, 1952; the Air Corporation Act, 1953; etc., etc.

(2) Acts which require Rules and Regulations framed



under them to be laid on the table of the House, but do not provide that they shall be subject to modification by the House, *e. g.*, the Reserve Bank of India Act, 1934; the Requisitioning and Acquisition of Immovable Property Act, 1952; the Cinematograph Act, 1952; the Tea Act 1953, etc.

(3) Acts which require that the rules, regulations, etc., framed thereunder shall be laid on the table of the House and shall be subject to modification by the House, *e. g.*, the Delhi Road Transport Authority Act, 1950; the Representation of the People Act, 1950; the Reserve and Ancillary Air Forces Act, 1952, etc.

Legislatures have also, in certain cases, conferred quasi-judicial powers on public or local authorities to secure the health, safety, sanitation and public morality of the nation. This sphere is within the administrative competence of the Government, and Legislatures in these cases seldom provide for judicial review. The Government have also established Public Corporations by statute such as the Damodar Valley Corporation, State Trading Corporations, etc. Employees of such Corporations are exempted from legal proceedings for 'anything done in good faith' or proposed to be done by them under the Act. There are some semi-autonomous boards like Labour Board, the Rubber Board, the Silk Board, Khadi and Village Industries Board, the Handicrafts Boards, Tea Board, etc., which are given quasi-judicial powers. Besides, under certain statutes like the Registration Act, the Trade Marks Act, the Patents and Designs Act, the administrative authority adjudicates essentially between two parties. All these agencies and many others exercise discretionary authority. The multifarious functions of a quasi-legislative and quasi-judicial nature performed by them make India virtually an administrative State.

**Does the practice of delegated legislation lead to bureaucratic despotism ?**

It is worth while examining whether the growth of delegated legislation has led to bureaucratic despotism in England and India. The criticism levelled against this development in England by Chief Justice Hewart who described it as 'the



new despotism'\* and Dr. C. K. Allen who condemned it as 'bureaucracy triumphant',† led to the setting up of a Committee on Ministers' Powers in 1932 to weigh the gravity of the charges and to propose remedial proceedings. The Committee rejected the charge of *despotism*, but stressed the need of imposing some checks on administrative decisions of ministers. Two safeguards were to be provided: (1) a proper procedure in the department and (2) judicial review of administrative action. The Committee also proposed that quasi-judicial powers be assigned to the departments only as an exception. If such functions were assigned, they should be given to ministerial tribunal rather than a single minister.

As matters stand at present, the control exercised by the High Court on administrative tribunals is limited in scope. The High Court is not allowed to decide matters brought before it on the merits of the case. It only enquires into points of law. Therefore, as advocated by Prof. Robson, Dr. Jennings and others, it would be advisable to set up a high-powered administrative tribunal, as in France, to hear appeals from the decisions of all administrative tribunals, both on points of fact and law. They should, however, be subject to judicial control of the Supreme Court of India.

Bureaucracy has been defined by Laski as 'a system of government, the control of which is so completely in the hands of officials that their power jeopardises the liberty of ordinary citizens'. Such a government cannot be said to have developed in England. The civil servants in England are part of the democratic machinery of the country. In the words of Sir Maurice Gwyre: 'Civil servants are hard pressed men who have not the time, even if they had the desire, to devote their energies to the acquisition of power for the purpose of harassing the King's subjects.'

The same holds true of India. Parliament exercises control over delegated legislation. A committee consisting of ten members of Parliament called the 'Committee on Subordinate Legislation' on the lines of a Select Committee of the House of Commons has been set up for the purpose of scru-

---

\* *Hewart*: New Despotism.

† *C. K. Allen*: Bureaucracy Triumphant.



tinizing orders and regulations with the object of drawing the attention of members to objectionable features in them. This Committee met in December 1953, March 1954 and again in 1956. It recommended that all bills delegating powers should have a memorandum giving full purport and effect of the delegation of power to the subordinate authorities and also the points which may be covered by the rules, the particulars of the persons who are to exercise those powers and the manner in which those powers are to be exercised. The Committee also recommended that in future the Acts should expressly provide that rules made thereunder shall be subject to modification by the House.

Another control exercised over delegated legislation is that of the Supreme Court of India which can hear appeals against administrative decisions. The Supreme Court of India has jealously defended the liberties of citizens against official encroachment. However, the best safeguard for liberty is a vigilant, well-informed and responsible public opinion.

### **Towards a Responsible Bureaucracy**

This leads us to the consideration of measures ensuring accountability of the administrative personnel to the people in an effective sense.

“A Government without bureaucrats”, says Peter H. Odegard, “is like a centripede without legs, unable to move even to save itself—and powerless to accomplish any of the goals for which governments are instituted among men. For it is upon the bureaucrats that we depend to see that these goals or policies are realized in practice”. Bureaucracy and democracy are not antagonistic to each other. A constitutional system which cannot act with despatch and strength cannot live.

The qualities of a responsible bureacuracy are that it should be answerable to the Legislature and to the people for what it does or omits to do. It should have a high degree of technical competence, should be incorruptible, honest, hard-working, reliable and loyal, and must have an abiding faith in the basic values of the society it serves.

The responsibilities of a bureaucrat may be conveniently classified into (a) political, (b) legal and (c) moral. A bureau-



crat has political responsibility to his minister. He has legal responsibility to the Courts. If he transgresses the limits of his authority and brings dishonour to the community of which he is a member, he can be hauled up in a Court of law. He has moral responsibility to the State and society and to his own self. He should have a sense of dignity and self-respect without which he cannot have regard for others.

### **Legislative Control of Bureaucracy in U. S. A. and England**

Politically, the administrative personnel in the U. S. A. is responsible to the President, who is the appointing authority and to whom they are accountable for what they do. They are also responsible to Congress which exercises control over them through the enactment of laws defining the limits of their powers, and through special investigation committees which inquire into their work. However, the Legislature is handicapped in exercising effective control over the administrative personnel because of its vast size. In England, India and the U. S. A., the legal responsibility of the administrative personnel is enforced through the ordinary courts, and the liability for wrongful acts by civil servants is attached to the individual and not to the State. There has, however, been a significant change in this concept of late. The Crown Proceedings Bill (1947) of England admits with minor exceptions State liability for wrongful acts of public servants. The Federal Tort Claims Act of 1946 in the U. S. A. makes the U. S. Government similarly liable for injury or loss of property or personal injury, damage caused by wrongful acts of a State employee acting within the scope his employment. This has been done to safeguard the interests of the citizens and to save them from the bother of infructuous and long drawn out litigation against a government employee.

Excessive and rigid control over the bureaucracy hinders its free development and makes it timid and over-cautious in the performance of its functions at the cost of initiative and imagination. The real control over the bureaucracy should be its sense of moral responsibility. It should be imbued with a spirit of service and must attain a high standard of professional honesty, scientific management and technical competence.



It has been truly said that a *responsible bureaucracy requires a responsible democracy and a responsible citizenry*. The people should not direct irresponsible attacks upon public servants. They should rid themselves of their fear complex. The famous proverb that a people gets the government that it deserves is nowhere so evident as in the relationships between bureaucrats and citizens. Citizens should be law-abiding and should offer co-operation to the authorities in administration. The officer likewise should respond to such gestures in a co-operative and helpful manner. There is little danger of bureaucracy turning into despotism, so long as in the selection, training and supervision of civil service personnel the principle of service and not of authority is emphasised and constantly hammered in.

#### Nature of Public Administration in India

India's goal of a socialist pattern of society demands a reorganization of its public services so as to fit in with the new concept and ideal of the State. To quote the words of Pandit Jawaharlal Nehru, "Administration is meant to achieve something; it should not exist in some kind of an ivory tower, following certain rules of procedure and, Narcissus-like, looking at itself with complete satisfaction. The test of good administration is the welfare of the people whom it is meant to serve."

*Defects.* At present our administrative system is full of certain weaknesses which it is necessary to remove in the interests of national well-being.

(1) *Red-Tapism.* The first defect of the Indian system is red-tape and delay. The civil servants are excessively fond of formalities and this causes undue delay in the conduct and despatch of business. They allow things to drift. There is unnecessary movement of files through a long channel, and lack of enough personal contacts between officers of the Ministry and executive departments, and the officers of the ministries and the Finance Department.

(2) *Want of Dynamism.* Men of the civil services do not seem to have a sense of moral responsibility. They do not realise the idea behind democratic planning and of enlisting the people's co-operation in national undertakings.



Their spirit is one of aloofness from the common people. The remarks of G. D. H. Cole on the character of the British civil service and their snobbishness hold true with greater force in the case of Indian civil servants. Mr. Cole says: "The civil servant is recruited largely from cleverish, unadventurous persons who like a quiet life, set a high value to security, and regard the rest of the humanity, in Carlyle's famous phrase referring to the electorate, as 'mostly fools' ... This attitude of the custodian of orderly administration passes easily into the perversion in which it becomes sheer obstruction to change..... From home to office, from office to club, where he hobnobs with other civil servants of his standing, from club back to office, and from office to home, his life follows a singularly invariable course."

(3) *Lack of Co-ordination.* Another defect is lack of co-ordination and duplication of work as between the various departments of the same ministry and different ministries of the same Government. Officers multiply and there is no attempt at effecting a saving in government expenditure. Often the same type of work is done in several departments. An ordinary citizen feels bewildered where and how he can obtain a particular piece of information or redress. A film producer, for example, does not know whether he should deal with the Production or the Commerce Ministry or the Import Trade Controller or the Information Ministry or the Board of the Film Censors in connection with his film problems. All these offices deal with one or other aspect of his industry. This multiplicity of offices causes delay in the disposal of work and files are often pushed from one department to another and from one ministry to another.

(4) *Absence of Secrecy.* In the present set-up of government offices, hardly anything remains secret. Even top military and diplomatic secrets of the Government have leaked out to foreigners.

(5) *Lack of Integrity and Conscientiousness.* It is absolutely necessary for the efficient functioning of the Government that the administrative personnel of the Government should be honest, upright, sincere and conscientious in the discharge of its duties. What is required is integrity and



character in the members of the services. The Government officers should be able to inspire confidence in the public by their honest and efficient dealings. They should be recruited on the basis of merit and their promotion should depend on good work rather than on considerations of caste, class, family, language or regionalism.

(6) *Rigidity and Aloofness.* The civil service should be guided by two fundamental principles—neutrality and detachment. The civil servants are expected to implement the policy of the party in power, without questioning its rationale. They should have no political bias of their own, “But detachment and neutrality do not mean aloofness and rigidity. The civil servants should move with the democratic forces and should have flexibility, impartiality and honesty. These virtues have not yet fully developed in the members of our services.

(7) *Shirking of Responsibility.* Another serious defect of our services is that they shirk responsibility. Dr. Paul Appleby, American expert on public administration in his report on the Indian Administrative System says, “By a curious proliferation of the conception of parliamentary responsibility and by reliance on excessive procedures of cross-reference, there has been built an extraordinary evasion of individual responsibility and a system whereby everybody is responsible for everything, before anything is done.”

(8) *Timidity.* The members of our services are not only irresponsible but also timid. They fight shy of taking independent decisions and depend for everything on their political boss or bosses. Files move in a vertical direction from bottom upwards, till the final decision conveys the whimsical judgment of a hard-headed minister. Such an attitude is hardly conducive to the healthy growth of parliamentary democracy. In the words of Herman Finer, “Undue loyalty tends to cripple independence of thought, and leaves the parliamentary heads of various departments without healthy assistance which they have a right to expect, and which is at times much more likely to be rendered by reasonable and deferential opposition than by mere agreement, resting wholly on the ties of discipline.”



The defects of our administrative services, also common to most other countries, have been admirably summed up in a liturgy posted by an anonymous writer to the Calcutta United Services Club, and published by 'Critic' in *The New Statesman and Nation*, London.\*

#### Form of Daily Service for use in Government Departments

O Lord, grant that this day we come to no decisions,  
Neither run into any kind of responsibility.  
But that all our doings may be ordered to establish  
New and quite unwarranted departments  
For ever and ever

O thou, who seest all things below  
Grant that thy servants may go slow,  
That they may study to comply  
With regulations till they die.  
Teach us, Lord, to reverence  
Committees more than common sense ;  
Impress our minds to make no plan  
And pass the baby when he can  
And when the Tempter seems to give  
Us feelings of initiative  
Or when alone we go too far  
Chastise us with a circular.  
'Mid war and tumult, fire and storms,  
Strengthen us, we pray with forms  
Thus will thy servants, ever be  
A flock of perfect sheep for thee.'

The views about public services expressed, above may be exaggerated but they do point to some of the serious maladies from which our services suffer.

#### Reform of Indian Administrative System

In order to examine in detail the defects of the Indian administrative system and to suggest ways and means to make it an efficient instrument for assuming the new responsibilities of a Welfare State, the Government of India appointed in 1951 Shri A. D. Gorwala to make recommendation concerning the administration of public enterprises,

---

\*Published in *The Times of India*, December 29, 1956.



and Dr. Paul H. Appleby, Ford Foundation Consultant in Public Administration, to study the administrative system and make recommendations for its improvement. The former submitted his recommendations for the formation of autonomous public Corporations in 1952, and the latter submitted two separate reports, in 1953 and 1956. A summary of Dr. Appleby's observations and recommendations is given below :—

*Appleby Report.* Dr. Appleby felt that there was too much of red-tapism in government work. According to him a decision of the Government is reviewed by too many organs of the Government in too detailed, too repetitive and too negative terms.

He pointed out that due to reliance on excessive repetitive nothings and pointless cross-references, there was evasion of individual responsibility. Well-thought-out plans are often scotched by a single stroke of the pen.

Dr. Appleby suggested limiting the functions of the Comptroller and Auditor General to lessen delay between decision and execution. He pointed out that at present the execution of any plan has to cross two hurdles : (1) The Ministry of Finance and (2) the office of the Comptroller and Auditor General. The latter is largely responsible for the inaction of the administrative departments.

Dr. Appleby said, "Auditors are not administrators". They know little about the needs of administration. It is very important for administrative officers to enjoy some freedom in incurring expenditure on urgent and important matters without the prior sanction of the Comptroller and Auditor-General. Such an expenditure could be audited later and the officer concerned could be held responsible for any illegal waste.

Some other suggestions offered by Dr. Appleby were as follows : the establishment of an Institute of Public Administration ; the setting up of an organisation and methods office ; consolidation of administrative responsibilities for the implementation of the Community Projects and other developmental activities ; appointment of executives to fill in the gaps in the administrative hierarchy so as to



make it truly pyramidal ; elimination of fixed "cadre" limitations in order to make recruitment wholly dependent upon frequent and flexible determination of needs ; and the establishment of personnel training institutions to maximise the potentialities of all persons working for the Government.

*Implementation.* Most of the recommendations made by Dr. Appleby have been implemented. An institute of Public Administration has been set up in Delhi. An Organisation and Methods Division as part of the Cabinet Secretariat was set up in March 1954. The main task of this Division is to supply the leadership and drive for quick and efficient disposal of Government work, to eliminate delays and to root out causes which adversely affect the speed and quality of work. The work of the Division is carried on through O and M cells set up in each Ministry or Department under the charge of an officer of the grade of Deputy Secretary. Inspections, case studies, areas statements, recording and indexing, delegation of enhanced authority to Section Officers and procedural reforms are some of the methods by which the Division tries to achieve speedy and efficient disposal of cases.

Recently, the Government of India has taken up another step to streamline the services. It has appointed a senior I. C. S. officer to survey the civil service system, its functions, defects, remedies, recruitment and training courses, etc. The officer is at present analysing and studying the structure of the civil services abroad, reports of commissions appointed from time to time in different countries, comments and criticisms of the services and the work of all previous committees.

Use of this study will be made for the improvement of the methods of recruitment and training of the civil services in India. So far, our services discharged purely administrative functions. In future, they will be called upon to discharge varied functions connected with the work in plants, factories, scientific institutions and the like. New cadres of statistical, industrial, information, health, education and social services will, therefore, be needed. For such recruit-



ment, it will be necessary to reorganise the work of the Public Service Commissions on enlightened lines.

The training of civil servants will need a new orientation so that they may feel at one with the interests of the masses. They will have to forget the old British ways of keeping aloof from the people and of adopting a stiff, snobbish attitude to them. They will also have to learn ways of enthusing the people in the execution of the National Plans in a democratic manner.

#### Reorganisation of Public Services after Independence

With the transfer of power in 1947, it became necessary to reorganise the structure of public services in India. Under the 1935 Constitution Act, the control over the civil services in India was vested in the hands of the Secretary of State for India. With the dawn of India's independence, it became necessary to transfer this control to the hands of Indians. Late in 1947, therefore, an agreement was concluded between the Government of India and the Secretary of State for India by which control over the members of the All-India Services, *viz.*, the I. C. S. and the I. P., was transferred from Whitehall to Delhi. Under the terms of this agreement, members of the imperial services were given liberal compensation in case they wanted to retire. About 500 British civilians took advantage of this offer and retired from service.

In 1947, the Partition of India took place. Most of the Muslim officers opted for service in Pakistan. This created large gaps in our administrative structure. Also, widespread communal disturbances which followed in the wake of Partition, and the new role of a Welfare State adopted by the Government of India after independence imposed heavy and additional responsibilities on our services. All this happened at a time when the strength of our services was at its lowest.

The Government of India rose to the occasion and promptly set about the task of meeting the challenge of the new situation. In October 1946, it secured the agreement of the State Governments to the formation of two new all-India services, *viz.*, the Indian Administrative Service



and the Indian Police Services in place of the former services called the I. C. S. and the I. P. Three years later, the two services were extended to the former Princely States also. A special Recruitment Board was set up in July 1948 and entrusted with the task of surveying the available administrative man power, both inside and outside the Government, and to select suitable persons to make good the deficiency resulting from the Partition. The Board completed its work in September 1949, but with the integration of the former Princely States, which was brought about in the mean time, it had to undertake similar requirements in those states also.

Even with such addition to the strength of our services fresh demands continued to be made on them by the country's First and Second Five-Year Plans, and by the addition to the functions of the State in the context of our new ideal of a socialist society. Large number of our senior officers were called upon to fill jobs in the numerous State undertakings, banks and insurance companies and to man diplomatic posts and international institutions. In order to meet all these requirements, the Government of India again decided to undertake a fresh recruitment for the Indian Administrative Service by setting up a Special Recruitment Board in 1956. An all-India test followed by an interview was conducted for the purpose and about 150 persons were selected.

*The C. S. S.* Reorganisation also took place in some other services, e.g., the Central Secretariat Service. This service which includes within its scope all posts in the Central Secretariat and attached offices of the ranks of Under Secretaries, Section Officers and Assistants, was organised in 1950. This service is organised into four grades, Grade I (Under Secretaries), Grade II (Section Officers) Grade III (Assistant Superintendents), and Grade IV (Assistants). Recruitment of Assistants is made on the result of an open competition and interview. Higher posts are filled partly by promotion and partly by selection.

*Industrial Management Pool.* A scheme to constitute this pool has been recently announced. The Pool will be drawn on for manning senior managerial posts in the public enter-



prises which are managed directly by the government-controlled Corporations. The Pool include posts of a technical nature, *e. g.*, general management, finance and accounts, sales, purchases, stores, transportation, personal management and welfare, and general administration.

*Other Cadres.* Proposals are under way to constitute more all-India cadres, *e. g.*, Information Cadre, Parliamentary Personnel Cadre, Social Service Officers cadres, etc. The object behind such moves is to secure a team of experienced and trained officers to man these important services at the Centre and in the States and to secure uniformity in all-India policies and administration.

#### Services under the Union and States

The Union Government and the State Governments have their separate administrative personnel. The State Services pertain to subjects within the jurisdiction of the States, such as land revenue, agriculture, forests, education, health, local self-government, etc. The higher administrative jobs in the States are filled by members of the two all-India services, *viz.*, the Indian Administrative Service and the Indian Police Service. The recruitment for members of the services along with some other all-India services\* is made by the Union Public Commission. Each State is allotted a quota in these services. After the necessary selection and training, the members of these two services are posted in the States. Their terms of service are determined by an Act of Parliament and by rules made thereunder by the Central Government.

*Indian Administrative Service.* The Indian administrative Service forms the pivot of the entire administrative

\*These services are : Indian Foreign Service; Indian Audit and Accounts Service; Indian Defence Accounts Service; Indian Customs and Excise Service; Transportation (Traffic) and Commercial Departments of the Superior Revenue Establishment of Indian Railways; Military, Lands and Cantonment Service (Class I & II); Indian Postal Service (Class I); Central Engineering and Electrical Engineering Service (Class I & II); Indian Railway Service of Engineers; Telegraph Engineering Service (Class I), Telegraph Traffic Service (Class II) Military Engineering Service (Class I); Survey of India (Class I & II) Service, and Central Secretariat Service.



structure of the country. The members of this service are responsible for carrying out the directives of the Government in regard to administration and economic planning envisaged in the programme of the Welfare State. They are a multi-purpose service composed of general administrators and specialists. Their recruitment by the Public Service Commission depends on a written test of a high standard and also a personality test. The selection is followed by an intensive training at IAS Training School, Delhi, where stress is laid on fostering correct attitudes to questions of personal and public conduct. Among the principal subjects in which the trainee is given a thorough grounding are Indian history and Constitution, elements of criminal and civil law, theory and practice of public administration and the language of the State to which he is allotted.

*Other Services.* Besides the two all-India services, there are other Central Services for manning the various departments under the control of the Union Government, e. g., Information, Broadcasting, Communications, Railways, Customs, Income-Tax, Foreign Department, Secretariat Offices, etc. The recruitment to such services is also made by the Union Public Service Commission. The members of the Union and State services are broadly divided into four categories called Class I, Class II, Class III and Class IV services. Executive posts are usually filled in by the members of the Class I and Class II services, while clerical and subordinate posts are manned by members of the Class III services. To the last class belong the peons, the *daftiris*, and the *farashs* etc. Recruitment to all superior services is made by the Public Service Commission. For subordinate services, there are in some States Subordinate Services Selection Boards, and in others, recruitment is made by departmental heads. For railways, separate Railway Service Commissions have been constituted.

*Rights of Services.* The Constitution provides for reasonable security of service and tenure to the members of the services. Article 311 of the Constitution provides that (1) no member of the public services can be dismissed or removed from service by any authority subordinate to that by which he was appointed : (2) no member of the public



services can be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Exception is made only in certain cases, *e. g.*, the civil servant is not given the right to defend himself in cases where, (1) he is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, (2) or where it is considered impracticable to do so or where in the interest of the security of the State it is not considered expedient to give him such an opportunity. (Articles 311, 315, 316 and 328).

### Public Service Commissions

For the recruitment of public services the Constitution provides for the creation of Public Service Commissions independent of Executive, at the centre and in all the States. Two or more States may, however, agree to have a joint Public Service Commission. The Parliament can also by law establish a joint commission for two or more States if the Legislatures of such States pass a resolution to that effect. Further, the Union Public Service Commission can, with the approval of the President, serve all or any of the needs of a State if the Governor of that State so requests. ✓

*Composition and Nature.* The Constitution does not fix the strength of the Commissions. Their exact strength is to be determined by the President or the Governor, as the case may be. It has been decided that there should be six to eight members in the Union Public Service Commission and three members in the State Public Service Commissions. The President or the Governor, as the case may be, appoints one of the members of the Commission as the Chairman. One-half of the members of the Commission must be persons who have held office for at least ten years either in the Government of India or under the Government of a State. Members hold office for 6 years or until they attain the age of 65 in the case of Union Commission and of 60 in the case of a State Commission, whichever is earlier. The Chairman of the Union Public Service Commission is debarred from further employment either under the Government of India or the Government of a State. A member



other than the Chairman of the Commission is, however, eligible for appointment as Chairman of that Commission or that of a State Public Service Commission, but for no other Government employment. The Chairman or any member of the Commission cannot be removed from office except by an order of the President on the ground of misbehaviour after a reference to that effect has been made to the Supreme Court and its advice obtained for his removal. Such removal may also be effected if he has become insolvent or has become unfit by reason of infirmity of body or mind or become interested in any paid employment outside the duties of his office or in any contract or agreement with the Government. The salaries and allowances of the members of the Public Service Commissions shall be charged on the Consolidated Fund of India or the State and shall not be subject to the vote of the Legislatures.

All these provisions are designed to secure the independence and impartiality of the members of the Commission. Their tenure and other conditions of service also give them complete immunity from the control of the Government and the Legislature.

#### **Functions of the Public Service Commission**

The main functions of the Union and State Public Service Commissions as prescribed in Article 320 of the Constitution are : (i) recruitment to all Civil Services and posts under the Union or State, as the case may be, by a written examination, by interview and by promotion ; (ii) advising the Government on all matters relating to methods of recruitment and principles to be followed in making appointments to and promotions and transfers within the public services ; (iii) all disciplinary matters affecting public servants ; (iv) any claim by or in respect of persons who are serving or have served the Government, and any claim for the award of compensation in respect of injuries sustained by a government servant while on duty, or in respect of costs incurred by him in legal proceedings arising out of his official duties. The Commissions must advise their Government on these or any other matters referred to them for the purpose. Such opinions offered by the Commission



are treated as advisory, though it is expected that these recommendations will generally be accepted.

*Power of the Government to exclude Certain Matters from the Purview of the Commissions.* The Constitution empowers the President and the Governors to make regulations specifying the matters in which the Commissions need not be consulted. The Government need not consult the Public Service Commissions on matters relating to the reservation of appointments or posts in favour of the Backward Classes, Scheduled Castes and Scheduled Tribes. All regulations made by the President or the Governor relating to matters in which it would not be necessary to consult the Commissions are to be laid before each House of the appropriate Legislature for not less than 14 days.

*Annual Reports of Public Service Commissions.* The Commissions are required to submit an annual report of the work done by them to the President or the Governor, as the case may be. Such reports are placed before the Legislatures. The heads of the State explain to the Legislature why some recommendations of the Commission are not acceptable to the Government. This provision ensures that the Government does not ordinarily ignore the advice of the Commission, and when it does so, it explains to the Legislature all deviations from the recommendations of the Commission.

### **Organisation and Work**

The Commission is independent of the Government in the discharge of its statutory functions. The secretarial staff of the Commission forms part of the reorganised Central Secretariat Service.

The standards and syllabi of competitive examinations for recruitment to the All-India and Central Services are laid down by the Commission with great care in consultation with the Ministries of the Government of India and educationists of standing. Besides a prescribed minimum standard in the written test, the candidates competing for these services are required to pass a *viva voce* test which enables the Commission to assess their personality. Lately, the Com-



mission has also started supplementing the interviews with a group discussion so that the assessment made at the interview may be verified. The Chairman of the Commission presides over the Board which consists of one or more members of the Commission, an eminent educationist and representatives of Ministries concerned, including one or more senior officers of the Indian Civil Service.

With increase in the Government's activities, particularly in connection with the implementation of scheme of development under the Five-Year Plans, the Commission has to make direct recruitment to quite a large number of specialised posts, which cannot be filled by promotion of persons belonging to duly constituted services. At the interviews for such posts, a representative of the Ministry concerned invariably joins the selection board and helps the Commission to assess the suitability of the candidates. In addition, it is usual to associate with the board a specialist or two not connected with the Ministry concerned. In regard to some posts, the Commission holds practical or written tests as well. If the Commission is unable to recruit suitable candidates by open advertisement, it explores possibilities of securing suitable personnel through direct contact with experts in different fields.

### Select Bibliography

- Majumdar, B. B.* : Problems of Public Administration in India.  
*Rubthnaswamy, M.* : Principles and Practice of Public Administration.  
*Appleby, P. H.* : Report on Public Administration in India.  
*Rajgopalachari, C. R.* : Patel-Memorial Lecture of A. I. R. *Hindustan Times*, August, 15, 1955.  
 Committee on Subordinate Legislation, I, II, III, IV, V Reports, Lok Sabha Secretariat, New Delhi.  
 Report on India's Administrative System, Dr. Paul H. Appleby Comments and Reactions Lok Sabha Secretariat, New Delhi 1956.



## CHAPTER 26

### PUBLIC FINANCE UNDER THE NEW CONSTITUTION

The financial relations between the Union and the States under the new Constitution follow mostly the lines of the Government of India Act, 1935. (see chapter XII). The sources of revenue are broadly divided under two heads. There are certain heads of income which are solely allotted to the Centre. There are some other sources which belong to the States. In order, however, to improve the financial position of the States, the Constitution provides that certain taxes will be levied by the union, but collected by the States; some other taxes will be levied and collected by the Union, but their proceeds will be given over to the States. Some tax proceeds as from income tax will also be divided between the Union and States.

The detailed provisions of the Constitution in respect of the actual division of the sources of revenue between the Central and the State Governments are given below :—

#### Union Sources of Revenue

The taxes to be levied and collected by the Union are as follows :—

1. Taxes on income other than agricultural income.
2. Duties of customs including export duties.
3. Duties of excise on tobacco and other goods or produced in India except.
  - (a) alcoholic liquors for human consumption;
  - (b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol.
4. Corporation tax.
5. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
6. Estates duty in respect of property other than agricultural land.



7. Duties in respect of succession to property other than agricultural land.

8. Terminal taxes on goods or passengers carried by railway, sea, or air, taxes on railway fares and freights.

9. Taxes other than stamp duties on transactions in stock exchanges and future markets.

10. Stamps duties in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

11. Taxes on the sale or purchase of newspapers and on advertisements published therein.

### State Sources of Revenue

The main sources of revenue of the State Governments are as follows :—

1. Land revenue.
2. Taxes on agricultural income.
3. Duties in respect of succession to agricultural land.
4. Estate duty in respect of agricultural land.
5. Taxes on lands and buildings.
6. Taxes on mineral right subject to any limitations imposed by Parliament by law relating to mineral development.

7. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India :—

- (a) alcoholic liquors for human consumption ;
- (b) opium, Indian hemp and other narcotics, drugs and narcotics, but not including medicinal and toilet preparations containing alcohol.

8. Taxes on the entry of goods into a local area for consumption, use or sale therein.

9. Taxes on the consumption or sale of electricity.

10. Taxes on the sale or purchase of goods other than newspapers.



11. Taxes on advertisements other than advertisements published in the newspapers.

12. Taxes on goods and passengers carried by road or on inland waterways.

13. Taxes on vehicles, whether mechanically propelled or not suitable for use on roads, including tramcars.

14. Taxes on animals and boats.

15. Tools.

16. Taxes on professions, trades, callings and employment.

17. Capitation taxes.

18. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling. ✓

19. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

As the above sources of revenue were not considered adequate for meeting the financial needs of the States, additional sources of income have been provided to them, which fall under the following categories :

*Duties levied by the Union but collected and appropriated by the States.* Firstly, there are some taxes which are levied by the Union, but are collected and wholly retained by the States. In this category fall all those stamp duties and excise duties on medicinal and toilet preparations which are mentioned in the Union List. Such duties shall be levied by the Government of India but their proceeds given over to the States, except in relation to Union territories.

*Taxes levied and collected by the Union but assigned to the States.* Secondly, there are some taxes, which are levied as well as collected by the Union, but are wholly assigned to the States. To this class belong : duties in respect of succession to property other agricultural land ; terminal taxes on railway fares and freights ; taxes other than stamp duties on transactions in stock exchanges and future markets ; and taxes on the sale and purchase of newspapers and on adver-



tisements published therein. It may, however, be noted that only the net proceeds of these taxes after deducting expenses from the gross income are to be distributed to the States. The principle of such distribution is to be regulated by a law of the Parliament. Proceeds of such taxes as are attributable to Union territories, will be retained by the Government of India because those territories are administered by the Union.

*Taxes levied and collected by the Union and distributed between the Union and States.* Thirdly, there are some taxes which are levied as well as collected by the Union; but net proceeds thereof are distributed between the Union and the States. The share of the States is to be prescribed by an order of the President, and when a Finance Commission has been constituted, by it only after taking into consideration the recommendations of the Commission. To this category belong taxes on income, other than agricultural income. The Parliament by law may include, in this class, excise duties other than those on medicinal and toilet preparations. The amount of net proceeds in all such cases is to be determined by the Auditor-General of India, whose decision shall be final.

#### **Grants in lieu of export duty on Jute and Jute products**

Fourthly, the States of Assam, Bihar, Orissa, and West Bengal will get a share of the net proceeds of export duty on jute and jute products, so long as such duty is levied by the Government of India or until the expiry of ten years after the commencement the Constitution, whichever is earlier.

The Parliament may levy a surcharge on taxes mentioned under the second and the third categories of taxes which will wholly belong to the Union.

#### **Grants-in-aid**

The Parliament may by law provide grants-in-aid to be paid by the Union to such States, as are in special need of assistance. The amount of grant may be different for different States. These grants may be for various purposes. The Union Government will, however, be required to pay grant for the purpose of promoting the welfare of Scheduled



Tribes or Scheduled Areas in a State where the latter undertakes any scheme for the purpose with the approval of the former. It is obligatory that grant-in-aid must be paid to Assam to compensate for the administration of Tribal Areas especially entrusted to that State. Furthermore, Assam must be compensated for such schemes of development as may be undertaken by that State with the approval of Government of India for the purposes of raising the level of administration of these Areas. And lastly, the Parliament possesses the general power of giving grants-in-aid to any State or States, which the Parliament thinks to be in need of special financial assistance. Such grants are entirely optional in character.

It may be noted that the grants mentioned in the first three categories are obligatory, whereas the fourth one is entirely optional. The amount of such grants is to be fixed by the Parliament. Till a law on the subject is made by the Parliament, the President is authorised to fix the grants by an executive order.

#### FINANCE COMMISSION

The Constitution of India provides that, within two years of the commencement of the Constitution, and thereafter, at the expiration of every five years, the President will appoint a Finance Commission to make recommendations on the following matters :—

- (i) the distribution of the net proceeds of income-tax between the Union and the States and the allocation of the States' share among the States ;
- (ii) the distribution of other divisible Central taxes like Union excise duties ;
- (iii) the amounts to be paid to the States of Assam, Bihar, Orissa and West Bengal in lieu of the assignment of any share of the export duty on jute and jute products ;
- (iv) the principles which should govern the grants-in-aid to the States out of the Consolidated Fund of India ;



- (v) the principles which should govern the distribution of the net proceeds of the estate duty in respect of property other than agricultural land.

In accordance with this constitutional directive, the President appointed the first Finance Commission in November 1951, with Shri K. C. Niyogi as Chairman. The Commission submitted its report on December 31, 1952.

The second Finance Commission was appointed by the President on June 1, 1956 with Shri Santhanam as Chairman, and Shri Ujjal Singh, L. S. Misra, M. V. Rangachari and B. N. Ganguli, as members. The Commission submitted its *interim* recommendations to the Government in December, the same year. The following are in brief the recommendations of the two Commissions.

*Income Tax.* Both the Niyogi and the Santhanam Commissions have fixed the divisible pool of income tax at 55 per cent. The Santhanam Commission has slightly modified the previous share of the States fixed by the Niyogi Commission because of the Reorganisation of States and the inclusion of the State of Jammu and Kashmir in the Scheme. The shares of the various States in the divisible pool of income-tax have been fixed as follows :—

Name of State	Percentage Share fixed by Niyogi Commission	Percentage Share fixed by Santhanam Commission
Andhra Pradesh	—	8.01
Assam	2.25	2.23
Bihar	9.75	9.31
Bombay	17.50	18.91
Kerala	—	3.60
Madhya Pradesh	5.25	5.09
Madras	15.25	7.95
Mysore	2.25	5.93
Oriasa	3.50	3.46
Punjab	3.25	3.96
Rajasthan	3.50	3.47
Uttar Pradesh	15.75	15.59
West Bengal	11.25	11.48
Jammu and Kashmir	—	1.01



*Union Excises.* 40 per cent of the net proceeds of Union duties of excise on matches, tobacco and vegetable products were recommended to be distributed among the States as follows :—

Name of State	Percentage Share fixed by Niyogi Commission	Percentage Share fixed by Santham Commission
Andhra	—	8.92
Assam	2.61	2.58
Bihar	11.60	11.04
Bombay	10.57	13.59
Kerala	—	3.86
Madhya Pradesh	6.13	6.17
Madras	16.44	8.54
Mysore	2.62	5.45
Orissa	4.22	4.17
Punjab	3.66	4.60
Rajasthan	4.41	4.34
Uttar Pradesh	18.23	18.00
West Bengal	7.16	7.49
Jammu and Kashmir	—	1.25

*Export Duty on Jute.* The principal jute-producing States are Assam, Bihar, Orissa and West Bengal. These States were recommended for being given the following amounts for the loss of their share on jute duty :

State	Amount fixed by Niyogi Commission	Amount fixed by Santhanam Commission
Assam	Rs. 40 lakhs	Rs. 75 Lakhs
Bihar	Rs. 35 „	Rs. 72.31 „
Orissa	Rs. 5 „	Rs. 15.00 „
West Bengal	Rs. 105 „	Rs. 152.69 „



*Grants-in-aid.* The following grants-in-aid, under clause I of Article 275 of the Constitution, were recommended for distribution among States : (Rs. Lakhs)

Name of State	Grant-in-aid as recommended by Niyogi Commission	Grant-in-aid as recommended by Santhanam Commission
Andhra Pradesh	—	24
Assam	100	100
Bihar	—	80
Bombay	—	130
Kerala	—	41
Madhya Pradesh	—	251
Madras	—	5
Mysore	40	46
Orissa	75	107
Punjab	1,25	163
Rajasthan	—	115
West Bengal	80	83
Jammu and Kashmir	—	175

The detailed recommendations of the Santhanam Commission have not yet been announced.

### A Critical Estimate

The financial relationship between the Union and the States, under the new Constitution, has been criticised on the following grounds :

(1) *Inelastic sources of Revenues with the States.* The States have not been assigned elastic and increasing sources of revenue. They have to deal with nation-building activities like education, health, social welfare, Public works, local-self-government, etc. As such they require ever-increasing sources of income. The most important heads of income of the States are land revenue, irrigation rates, forests, excises and stamp and duties. There is a clamour among the peasants for the exemption of un-economic holdings from the payment of land revenue. If this demand is conceded, the income under this head will come down considerably. Irrigation rates are also described as excessive. Any government depending upon the votes



of the rural masses can ignore these demands only at the peril of its existence. The policy of prohibition is further imposing a heavy strain on the revenues of the States by reducing income and by the required greater expenditure on the enforcement staff. It is thus clear that the States need more sources of income.

(2) *No Rigid Allocation of Sources of Revenue.* A federal polity needs to have separate sources of revenue between the Union and the States. The dependence of one part on the other detracts from the element of autonomy and makes interference inevitable. In India, there are several divided heads of revenue, and the States depend, in a large measure, on the subsidies and grant in-aid from the Centre. This reduces them to the position of colonies, instead of to the status of equal partners in a political alliance.

(3) *No Power to raise Loans.* The States do not enjoy the unfettered power of raising loans. They have to depend in this matter on the tender mercies of the the Union Government.

In reply to the above criticism it may be said that the intention of the framers of our Constitution was to make the financial position of the Union sound and unassailable. This policy was in line with the general object of making India a strong federal polity. It was considered that the financial stability of the Union would indirectly benefit the States, and, given a sympathetic Government at the Centre, the States would be able to secure the needed help from the Union. The actual working of the Constitution and the way in which our Five Year Plans are being implemented has amply justified this hope.



## CHAPTER 27

### MISCELLANEOUS SUBJECTS NATIONAL EMBLEM

The National Emblem of India, which is a replica of the capital of the Ashoka pillar at Sarnath, is formed of three lions mounted on an abacus with the *Dharma Chakra* carved in relief in the centre, a bull on the right and a horse on the left and outlines of the *Dharma Chakra* on the extreme right and left. The words, *Satyameva Jayate* from the *Mundaka Upanishad* meaning "Truth Alone Triumphs" are inscribed in the Devanagari script below the Emblem.

The lion capital was adopted as the National Emblem by the Government of India on January 26, 1950. The fact that the original lion capital, designed between 242-232 B. C., was erected by Emperor Ashoka to hallow the spot where the Buddha first initiated his disciples in the eight-fold path of salvation, invests the Emblem with historical and spiritual significance. Carved out of a single block of sandstone, the original capital was surmounted by a wheel (*chakra*).

### NATIONAL FLAG

The National Flag of India is a horizontal tri-colour of deep saffron, white and dark green in equal proportions. Saffron is at the top, white in the middle and deep green at the bottom. The emblem of the flag is an exact reproduction of the wheel on the capital of the Ashoka pillar at Sarnath. It is superimposed on both sides of the flag, and is as broad as the white strip. The wheel has twenty-four spokes. The colour of the emblem is navy blue.

The origin of the tri-colour dates back to 1921, when during the session of the All-India Committee meeting at Bezwada (now Vijayawada), an Andhra youth presented Gandhiji with a flag made up of red and green, the colours representing the two major communities of India. Gandhiji suggested the addition of a white strip to represent the rest of India's communities and the Charkha to symbolize progress. In 1931, when the All-India Congress Committee



officially adopted the tri-colour flag as India's national emblem, it was emphasized that it bore no communal significance and was to be interpreted thus : "Saffron for courage white for truth and peace and green for faith and chivalry."

On July 22, 1947, the Constituent Assembly adopted this tri-colour as India's National flag. The Dharma Chakra of Emperor Ashoka was adopted instead of the charkha. "The wheel," said the Prime Minister, "is a symbol of India's ancient culture; it is a symbol of many things that India has stood for through the ages." The charkha had to be replaced because its inclusion entitled the violation of certain heraldic rules.

The colours and their significance remained the same as before. Dr. Radhakrishnan interpreted the colours in philosophical terms. The orange colour, according to him, denoted renunciation. White in the centre was light, the path of truth to guide our conduct. The green signified our relation to the soil, "our relation to the plant life here on which all other life depends." "The Ashoka wheel in the centre is the wheel of the Law of Dharma or virtue," he said, and "ought to be the controlling principles of all those who work under this flag. Again the wheel denotes motion .....the wheel represents dynamism and peacefull change."

#### NATIONAL ANTHEM

On January 24, 1950, the Constituent Assembly of India adopted Jana Gana Mana as the National Anthem. It was composed by the late Rabindranath Tagore in 1912. It was also decided that Bankim Chandra Chatterjee's famous invocation, Vande Mataram, would enjoy an equal status.

These two songs vied with each other for the status of the National Anthem. Each had a hallowed history. And each was the work of one of India's greatest writers.

Of the two songs, Vande Matram is the older. It occurs in Bankim Chandra's novel Ananda Math published in 1882. The first political occasion on which it was sung was the 1896 session of the Indian National Congress. It was set to music by Rabindranath Tagore. Gradually, the first two words of the song became the slogan of the national movement. In fact it has inspired some of the greatest sacrifices



in history. The only difficulty in adopting Vande Matram as the National Anthem seems to have been that it did not lend itself to harmonization.

Jana Gana Mana was described by Mahatma Gandhi as a devotional hymn. It was first published in January 1912 in Tattvabodhini Patrika of which Dr. Tagore himself was the editor. The poet rendered it into English in 1919 under the title. 'The Morning Song of India.' The song was first sung at a political meeting on December 27, 1911, the second day of the Congress session, and struck the audience as distinctive and dignified. The complete song consists of five stanzas. The first stanza, which has been adopted by the Defence Forces and is usually sung on ceremonial occasions, reads as follows :

Jana-Gana-Mana-dhinayaka Jaya he  
 Bharata-bhagya-vidhata.  
 Panjab-Sindhu-Gujarata-Maratha  
 Darvida-Utkala-Banga  
 Vindhya Himachal-Yamuna-Ganga-  
 Uchchala-jaladhi-taranga  
 Tava subha name jage,  
 Tava subha asisa mage  
 Gaye tava jaya-gatha.  
 Jana-gana-mangal-dayaka, Jaya he  
 Bharata-bhagya-vidhata.  
 Jaya he, Jaya he, Jaya he,  
 Jaya Jaya Jaya Jaya he.

The following is an English rendering of the stanza quoted above :

Thou art the ruler of the minds of all people, Dispenser of India's destiny. Thy name rouses the hearts of the Punjab, Sind Gujarat and Maratha, of the Dravid and Orissa and Bengal; it echoes in the hills, of the Vindhyas and the Himalayas, mingles in the music of the Ganga and the Yamuna and is chanted by the waves of the Indian Sea. They pray for Thy blessings and sing Thy praise. Thou Dispenser of India's destiny. Victory, Victory, Victory, to Thee.

The following is the text of the first stanza of Vande Mataram Song :



## VANDE MATARAM !

Sujalam, suphalam, malayaja shitalam,  
 Shasyashyamalam, Matram !  
 Shubhrajyotsna pulakitayaminim,  
 Phullakusumita drumadal shobhinim,  
 Suhasinim, Sumadhura bhashinim,  
 Sukhadam, varadom, Mataram.

The following English translation of the stanza is by Shri Aurobindo :

I bow to thee, Mother,  
 Richly watered, richly fruited,  
 Cool with the winds of the south,  
 Dark with the crops of the harvests,  
 the Mother !

Her nights rejoicing in the glory of the moonlight,  
 Her lands clothed beautifully with her trees in  
 Flowering bloom, sweet of laughter, sweet of speech,  
 The Mother, giver of boons, giver of bliss !

## NATIONAL (STATE) LANGUAGE

Article 343 of the Constitution provides that the official language of the Union shall be Hindi in the Devanagari script and the form of numerals for official purposes shall be the international form of the Indian numerals. English will, however, continue to be the official language for a period of not more than 15 years from the commencement of the Constitution. The President is authorized under Article 344 to constitute, after the expiration of five years from the commencement of the Constitution and thereafter at the expiration of ten years from such commencement, a special Commission to examine the growth and development of Hindi and make recommendations as to its progressive use for all or any of the official purposes of the Union with a view to replacing English completely at the end of the stipulated period.

The Constitution also provides that the recommendations of this Commission will be examined by a Parliamentary Committee of 30 members (20 members from the House of the People and 10 from the Council of States) elected by the respective Houses in accordance with the system of pro-



portional representation. In pursuance of this provision the President appointed a 21-member Commission called the "Official Language Commission," with Shri B. G. Kher as Chairman, in July 1955. The Commission submitted its report on August, 1, 1956 which is still under the consideration of the Government.

The Constitution further lays down that the legislature of a State may by law, adopt any one of the regional languages, in use in that State or Hindi as the language to be used for all or any of the official purposes. The following fourteen languages are recognised by the Constitution as regional languages.

Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Sanskrit, Tamil Telugu and Urdu.

For communication between one State and another and between a State and Union, the language for the time being authorised for use in the Union shall be used. The need for the use of the English language in the proceedings of the Supreme Court and the High Court and in bills, enactments and other laws has been recognised and Article 348 makes special provisions on the subject.

The proviso to Article 343 also empowers the President to authorise the use of Hindi in addition to English for any of the official purposes of the Union even during the stipulated period of 15 years. Accordingly, in December, 1955, the President authorised the use of Hindi for the following purposes : (i) Correspondence with members of the public, (ii) Administrative reports, official journals and reports to Parliament, (iii) Government resolutions and legislative enactments (iv) Correspondence with the State Governments which have adopted Hindi as their official language, (v) Treaties and Agreements, (vi) Correspondence with foreign countries and international organisations and (vii) Formal documents issued to Indian diplomatic and consular officers.

Article 351 enjoins on the Union Government to promote the spread of the Hindi language and to develop it in a manner that it may serve as a medium of expression for all the elements of the composite culture of India. In im-



plementing this directive the Central Government has taken a number of steps including arrangements for teaching Hindi to non-Hindi speaking employees of the Central Government during office hours, grants to State Governments and voluntary organisations for the propagation of Hindi and for specific schemes like preparation of dictionaries, grammars and a Hindi encyclopaedia, setting up a Board of Scientific Terminology for evolving Hindi words for use in the scientific, technological and administrative fields, translation of Central Acts into Hindi, and the evolution and use of Hindi words of command in the Armed Forces.

#### SPECIAL PROVISIONS OF CONSTITUTION FOR ANGLO-INDIANS, SCHEDULED CASTES AND SCHEDULED TRIBES

Besides the general provision of the Constitution which guarantee equal civil and political rights to all citizens, the Constitution contains special provisions for safeguarding the interests of, and assisting the minorities like the Anglo-Indian community and certain weaker and backward sections of the community like the Scheduled Castes and the Scheduled Tribes. These provisions include reservation of seats in Parliament and the State legislatures, preferential treatment in the matter of public employment and extended educational facilities.

*Safeguards for Anglo-Indians.* The Constitution, for example, provides that the President can nominate not more than 2 members of Anglo-Indian community to the House of the people, if he considers that they are not sufficiently represented therein. The Governor of a State can similarly nominate Anglo-Indians to the Legislative Assembly if he is of opinion that they should be represented therein. Provision has also been made for assuring them special safeguards in matters of public services and educational facilities. These safeguards will, however, last only for 10 years from the commencement of the Constitution.

*Scheduled Castes.* Similar reservations in services, legislatures and educational institutions have also been provided for Scheduled Castes and Scheduled Tribes, for 10 years, on the basis of their population strength.

#### Scheduled Areas

In our country there are several tracts of territory be-



sides Andaman, where modern civilisation has not yet made its headway. In these areas the people live in the Hunting or Pastoral stages of civilization. Under the 1935 Act a large number of such tracts had been declared as excluded and partially excluded areas. The partially excluded areas were in Madras, Bombay, Bengal, Bihar, C. P., Assam, Orissa and U. P. In our province, Jaunsar Bawar Pargana of Dehra Dun district and a portion of Mirzapur District had been classed as partially excluded areas. Wholly excluded areas were mostly in Assam (Naga Hills, Lushai Hill, North Kachar Hills) and partly in Madras, Bengal and N. W. F. P. The creation of these areas was considered necessary as most of them were inaccessible. In some cases, they were 125 to 250 miles inside the seas and they were inhabited by tribes which spoke strange languages and observed customs to legislate against which was to court rebellion. These areas used to be administered by the Governors in their sole discretion and the Ministers had no control over them.

The public opinion in India was, however, always against this unjustifiable division of the people into different groups. The Congress also condemned this policy and described it "as an attempt to leave a larger control of disposition and exploitation of the mineral and forest wealth of these areas in the hands of Europeans."

The number of scheduled areas under the new Constitution has, therefore, been very much limited. There are no scheduled areas in Uttar Pradesh. There are, however, some such areas in Rajasthan (Dungarpur, Banswara and Chittorgarh), Bihar (some areas in Ranchi, Singhbhum and Palamau districts), in Punjab and Madhya Pradesh. The creation of these areas was permitted since most of the people inhabiting them desired this arrangement to secure certain safeguards for the protection of their indigenous customs and conventions, traditions and ways of living. Provision has been made for the administration of these areas in the 5th Schedule of the Constitution. It is stated in this schedule that the administration of scheduled areas shall be carried on by the President with the help of Governors. In these areas no Act passed by the State or the Union Legislature shall be enforced unless it is specially promulgated by the



Governor with the sanction of the President. Further to associate popular opinion with the administration of these territories it has been provided in the Constitution that there shall be established in each state having scheduled areas and if the President so directs also in any State having scheduled tribes, a Tribes Advisory Council consisting of not more than 20 members of whom as nearly as may be  $\frac{3}{4}$ ths shall be the representatives of the scheduled Tribes in the Legislative Assembly of the state. It shall be the duty of the Tribes Advisory Council to advise the Governor on such matters pertaining to the welfare and advancement of the Scheduled Tribes as may be referred to it. In framing regulations for the administration of these areas also the opinion of these advisory councils shall be sought.

The President is authorised to declare any area as scheduled or alter its boundary or exclude it completely from such list.

#### **Tribal Areas in Assam**

Article 244 (2) read along with the Sixth Schedule to the Constitution provides for the administration of the tribal areas of Assam. These areas have been divided into two parts A & B. In Part A are included the United Khasi-Jaintia Hills District, Garo Hills District, Lushai Hills District, Naga Hills District, North Kachar Hills and Mikir Hills. In Part B are included NEFA and Naga Tribal Areas. The Governor of Assam is specially entrusted with the task of administering both such areas on behalf of the President.

*Tribal Areas in Part A.* Tribal Areas in Part A above are administered with the help of autonomous District Councils constituted by the Governor. Each District Council consists of not more than 24 members, of whom not less than  $\frac{3}{4}$ th are elected by adult franchise. These Councils make their own rules for the administration of their respective areas. They have powers of legislation with respect to disposition of land, administration of villages, inheritance of property, marriage and social customs, etc. They can constitute village councils or courts for the trial of suits and disputes, administer district and regional funds and establish and manage schools, dispensaries, markets and fisheries.



Certain powers of assesment and collection of taxes on land, professions, trades and employments, vehicles and boats are also vested in the Councils. The Governor of Assam is empowered to appoint a Commission to enquire into and report on the administration of the autonomous districts and regions. If necessary, the Governor may also place one of his Ministers in special charge of their welfare.

*NEFA and Naga Area.* The areas specified in Part B of the Sixth Schedule (the North East Frontier Area and the Naga Tribal Area) are administered by the President acting through the Governor of Assam as his agent. The President enjoys complete powers in relation to the administration of these areas in the same way as he enjoys the power to administer Andaman and Nicobar Islands or the Laccadives in accordance with provisions of Article 240 of the Constitution. The Governor of Assam in administering these areas, on behalf of the President, acts in his sole discretion and he is not bound by the advice of his Ministers. He has, however, his expert official advisers.

#### Commissioner for Scheduled Castes and Scheduled Tribes

Article 338 provides for the appointment of a Special Officer by the President for the Scheduled Castes and Scheduled Tribes. It is the duty of this officer to investigate all matters relating to the safeguards provided for these sections under the Constitution and to report to the President on their working. The President is further required to place these reports before both Houses of Parliament.

#### ADMINISTRATION OF UNION TERRITORIES

The Constitution Seventh Amendment Act provides that the President can by an order provide for the administration of Union Territories with the help of Advisory Committees.

Under this provision, the President has already constituted such advisory committees for Delhi, Himachal Pradesh, Manipur and Tripura. These will be associated with the Minister of Home Affairs.

The Advisory Committees for Himachal Pradesh consist of all members of Parliament representing Himachal Pradesh, the Lieutenant Governor of Himachal Pradesh and



a representative of the Bhakra Control Board. The Advisory Committees for Manipur and Tripura comprise members of Parliament representing these territories, the Chief Commissioners and members of the council of advisers associated with him.

The Advisory Committee for Delhi consists of the Chief Commissioner, the members of Parliament elected from Delhi, the President of Municipal Committee, Delhi, the Vice-President of Municipal Committee, New Delhi and the Vice-Chancellor of Delhi University.

The Advisory Committees, which will meet at intervals of not more than three months, will be consulted in regard to general matters of policy relating to the administration of the territory in the State field, that is, all legislative proposals concerning the territory in regard to matters in the State List including proposals to extend any State acts to the territory, such matters relating to the annual financial statement of the Union in so far as it concerns the territory, and such other financial question as may be specified through rules made by the President and any other matter on which it may be considered necessary or desirable by the Minister of Home Affairs that the advisory committee should be consulted.

Subject to the discretion of the Minister of Home Affairs to refuse in the public interest to give information or to allow discussion, the members of the the advisory committees will have rights in regard to interpellations subject to the some limitations as exist for the members of a State Legislature.

The meeting of the advisory committees shall be regulated by such rules of procedure as may be framed by the Ministry of Home Affairs in consultation with the advisory committees.

#### SPECIAL PROVISIONS OF THE CONSTITUTION RELATING TO JAMMU & KASHMIR

It was laid down in the Constitution that the jurisdiction of Union Government in relation to the State of Jammu and Kashmir will be limited only to Defence, Communications and Foreign Relations. The rest of the subjects would fall under the control of the State Government.



The State of Jammu and Kashmir acceded to India in accordance with the Maharaja of Kashmir's proclamation dated the 5th March, 1948. By the terms of this accession it was provided that the Union Government will have control in relation to that State only over three subjects mentioned above. The accession was also made subject to ratification by the Constituent Assembly of the State. It was further provided in the Constitution that if the Constituent Assembly of the Kashmir State passes a resolution for the exercise by the Union Government of control over a larger number of subjects, the President would be authorised to assume such control after issuing a public notification.

The Kashmir Constituent Assembly declared its unequivocal accession to India by a resolution which came into force on November 11, 1956. Earlier, by mutual agreement between the State of Jammu & Kashmir and the Government of India, it was agreed that Part I, II, III, V, and XI to XVII of the Constitution of India will apply to Kashmir, with suitable modifications. Accordingly, the President issued a proclamation, in 1954, giving effect to this agreement. By the same proclamation, the Supreme Court of India came to exercise jurisdiction in the State of Jammu and Kashmir and the financial integration of the State was effected with the rest of India.\*

#### CONSTITUTION OF KASHMIR

In November 1956, the Kashmir Constituent Assembly also passed its Constitution and it came into force on January 26, 1957. The following are in brief the main provisions of this Constitution :—

*The Executive.* The Head of the State shall be the *Sadar-i-Riyasat*. He shall be a permanent resident of the State and shall not be less than 25 years of age and shall be elected by the Legislative Assembly by a majority of the total membership of the Assembly. He shall hold office during the pleasure of the President. The term of the office shall be five years. He shall not hold any other office of profit

\* The jurisdiction of the Supreme Court of India will not apply to the enforcement of certain Fundamental Rights in order to safeguard the security of the State and land reform legislation.



and may be removed from his office by the President if an address by the Legislative Assembly supported by a majority of not less than two-third of its total membership is presented to the President praying for such removal on the ground of violation of the Constitution. The Sadar-i-Riyasat shall have the power to grant pardons, reprieves, etc. There shall be an Advocate-General appointed by the Sadar-i-Riyasat to give advice to the Government upon legal matters. He shall hold office during the pleasure of the Sadar-i-Riyasat.

*The Council of Ministers.* There shall be a Council of Ministers to aid and advise the Sadar-i-Riyasat in the discharge of his duties. The council of Ministers will be headed by the Prime Minister and will be jointly responsible to the Legislature.

*The Legislature.* There shall be two Houses known as the Legislative Assembly and the Legislative Council. The Legislative Assembly shall consist of one hundred members chosen by direct election. The Sadar-i-Riyasat may nominate not more than two women to be members of the Legislative Assembly if he is of opinion that women are not adequately represented in the Assembly. Twenty-five seats in the Legislative Assembly shall remain vacant for the area under the occupation of Pakistan. For the Scheduled Castes as many seats as are proportionate to their population in the State shall be reserved for a period of 5 years from the commencement of the Constitution. The Legislative Council shall consist of 36 members. Eleven members shall be from the province of Kashmir including one from the Ladakh district and eleven from the province of Jammu including one from Doda district and one from Poonch district. One member shall be elected by the members of the municipal committee, town area committees and notified area committees in the province of Kashmir and one by similar institutions in the Jammu province. Two members will be elected by permanent residents engaged for at least 3 years in teaching in recognised educational institutions—one each from the provinces of Jammu and Kashmir. Two members shall be elected by the members of the Panchayats and other local bodies specified by the Sadar-i-Riyasat from the province



of Kashmir and two from the province of Jammu. Six members shall be nominated by the Sadar-i-Riyasat including those belonging to any of the socially and economically backward classes in the State and the rest shall be persons having special knowledge and practical experience in respect of matters such as literature, science, art, co-operative movement and social service.

The Legislative Assembly shall continue for five years while the Legislative Council shall not be subject to dissolution, but one-third of its members shall retire on the expiration of every second year. Each House of Legislature shall be summoned and prorogued by the Sadar-i-Riyasat. The Legislative Assembly shall have a Speaker and Deputy Speaker and the Legislative Council a Chairman and a Deputy Chairman. There shall be freedom of speech in the Legislature. A money bill shall not be introduced in the Legislative Council. The Sadar-i-Riyasat shall have the power to promulgate ordinances during recess of Legislature.

In the event of failure of the constitutional machinery in the State, the Sadar-i-Riyasat shall by proclamation issued with the concurrence of the President of India, assume to himself all or any of the functions of the Government.

*The Judiciary.* The High Court for the State shall consist of a Chief Justice and two or more other judges to be appointed by the Sadar-i-Riyasat. The High Court shall be a court of record and shall have powers of such a court including the power to punish for contempt of itself. Every person who is a citizen of India and has for at least 10 years held a judicial office or has been for at least ten years an advocate shall be qualified for appointment as a Judge of the High Court. The usual places of sitting of the High Court shall be at Jammu and at Srinagar. Appointment of District Judges shall be made by the Sadar-i-Riyasat in consultation with the High Court and subordinate Judges in accordance with the rules made by him in that behalf after consultation with the Public Service Commission and the High Court.

*Public Service Commission.* There shall be a Public Service Commission consisting of a Chairman and



other members appointed by Sadar-i-Riyasat. A member of the Commission shall hold office for a term of five years or until he attains the age of 60 years whichever is earlier. The Commission shall conduct examinations for appointment to the services of the State and shall be consulted on all matters relating to methods of recruitment to Civil Services and Civil posts, on the principles to be followed in making appointments, promotions and transfers and on all disciplinary matters in respect of civil servants.

*Elections.* The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of the elections, shall be vested in an Election Commissioner to be appointed by the Sadar-i-Riyasat. The election to the Legislative Assembly shall be on the basis of adult suffrage and the minimum age of a voter shall be 21 years.

*Language.* The official language of the State shall be Urdu, but the English language shall, unless the Legislature by law otherwise provides, continue to be used for all official purposes of the State.

The Constitution provides for the establishment of an Academy of Art, Culture and Language where opportunities will be afforded for the development of Art and Culture and for the development of Hindi, Urdu and other regional languages of the State, namely, Dogri, Kashmiri, Ladakhi, Balti, Dardi, Punjabi and Pahari.

*Amendment of the Constitution.* The Constitution can be amended by the introduction of a Bill in the Legislative Assembly and passed in each House by a majority of not less than two-third of the total membership of that House. But no Bill or Amendment seeking to make any change in the provisions relating to the relationship of the State with the Union of India, the extent of executive and legislative powers of the State or the provisions of the Constitution of India as applicable in relation to the State shall be introduced or moved in either House of the Legislature.

---

\*The Election Commission of India has no jurisdiction over the electoral machinery of Jammu and Kashmir.



## CHAPTER 28

### ELECTIONS AND ELECTION PROCEDURE

We have seen in the previous chapters that the new Constitution has established a fully sovereign and democratic Republic in India. The people are the ultimate repository of all political power in the State. They elect the members of the Parliament and the State Legislatures. Every adult citizen, irrespective of consideration, religion, colour, caste or creed is accorded an equal right of vote. Every possible safeguard has been devised in the Constitution to see that the elections are conducted in a free, fair and impartial manner.

#### Election Commission

The Constitution provides that for the conduct of elections in India, there shall be established an independent body called the Election Commission. It will consist of a Chief Election Commissioner and such other Election Commissioners as the President may appoint. It shall be the duty of the Commission to superintend, direct and control the preparation of Electoral Rolls, the delimitation of constituencies, the conduct of elections and the adjudication of election disputes. To ensure that Election Commissioners discharge their duty with impartiality and fairness, the Constitution lays down that their conditions of service and tenure of office shall be determined by the President. The Chief Election Commissioner will not be removed from office except in the manner provided for the removal of a Judge of the Supreme Court. His conditions of service will not be varied to his disadvantage after his appointment. No Election or Regional Commissioner will be removed from office except on the recommendations of the Chief Election Commissioner.

#### The Two General Elections

The Constitution has not laid down in detail the procedure for the conduct of elections. Articles 324 to 329 only lay down the broad principles in this respect. The detailed



procedure for elections has been given in the Peoples' Representation Act as passed in 1951 and as amended in 1956.

So far we have had two general elections under the new Constitution. The *first* election was held in 1951-52 and the *second* in February-March, 1957. The procedure followed in the two elections was almost similar except that the second general election was conducted on a bigger scale than the first owing to an increase in the number of voters from 175 million to 193 million. For the same reason the number of polling stations in the second election increased from one and a half lakhs to two lakhs and of ballot boxes used from 24 lakhs to 29 lakhs. The total number of constituencies in the 1951-52 elections were 3104 for Lok Sabha and State Assembly members. These increased to 403, for Lok Sabha members and 2518 for State Assembly members in the 1957 elections.

In both the elections, single-member constituencies predominated over multi-member constituencies. These are found easy to manage and much less expensive for the candidates. There were no 3 member constituencies for the 1957 elections. Double member constituencies were provided only in such areas as were required to return candidates for some reserved seats as well.

In all over 18,000 candidates took part in the first general election and over 25,000 in the second. The second general elections did not affect the sitting members of the Legislative Assembly of Andhra where elections were held as late as 1954. Bye-elections for this Assembly, however, took place with the rest of India.

In all 14 all-India political parties took part in the first general elections. Of these the Congress Party polled the maximum number of votes and gained a majority in all States except in Travancore-Cochin and Pepsu. In the second general election, only 4 all-India parties were recognised. This recognition was accorded to only such parties as had polled at least 3 per cent of the total votes polled in the first general election. Such parties were the Congress, the P. S. P., the Communist Party and the Jan Sangh. The election symbols of these parties were the Yoked Bullocks, The Hut, the Sickle and a ear of Corn, and the Deepak.



The first general elections commenced in October, 1951, in the hilly areas of Himachal Pradesh, and ended in March, 1952. The second general elections took much less time. The polling started on February 24 and ended on March 14 except in some snow-bound hilly areas in Himachal Pradesh where elections were conducted in May, 1957.

### Procedure of Elections

Broadly the same procedure was followed in the two elections. The main features of this election procedure were as follows :—

(1) In both the elections only such persons were allowed the right of vote as had completed 21 years of age on a certain date announced by the Election Commission and had resided in a constituency for at least 180 days before the preparation of the electoral rolls.

(2) The electoral rolls, after the hearing of preliminary objections, were completed about four months before the conduct of general elections. These rolls are revised on a yearly basis.

(3) The notification fixing the dates for the second election was issued on January 19, 1957. Candidates were called upon to file their nomination papers before an appropriate authority by January 29, 1957. Almost a similar procedure was followed in the first general election.

Within seven days of the filing of nomination papers, their scrutiny was completed and candidates whose papers were found in order were duly notified. The Election Law was amended in 1956 to provide that there is no frivolous rejection of nomination papers.

(5) After scrutiny candidates were given three days to withdraw their candidature from the election if they so desired. For the 1957 elections, the Act was, however, amended to provide that candidates would be permitted to withdraw (themselves from the contest even ten days before the commencement of polling in a constituency.) In the latter case no refund of security was, however, permitted.



(6) Definite rules were laid down for conducting the election campaign in a fair and dignified manner. (No candidate was permitted to provide conveyance for bringing the voters to the polling booths. He was enjoined not to offer food or drinks or bribes or any other inducement to any voter, nor was he permitted to threaten or coerce any voter by saying that he would be subject to divine displeasure or spiritual punishment by not voting for him. The cry of religion in danger to induce people to vote in favour of any particular party was made illegal. Permissible expenses during an election campaign were laid down by law and candidates were required to file return of election expenses soon after the contest was over. No public meetings or loud-speakers or slogans were allowed near the polling booths on the day of election. To prevent impersonation by voters, an indelible ink impression was made at the left hand forefinger of each voter at the time of polling. All literature distributed by the candidates during their election campaign was submitted to the Election Commissioner for his scrutiny.

(7) To prevent inconvenience, hardship and suffering to the voters in walking over long distances, a polling booth was arranged for every 1000 voters within an area of not more than four sq. miles. In all about 200,000 polling booths were thus provided.

(8) Separate polling booths were provided for female voters.

(9) Polling was simultaneous for State Assemblies and the House of People. A voter was first given a ballot paper for the Assembly election and after he had cast his vote for the same, he was given another for choosing a representative for the Lok Sabha.

(10) Ballot papers were not required to be marked; instead each candidate was assigned a ballot-box marked with the candidate's distinctive symbol, for example, the hut, yoked bullock, ear of corn and sickle, deepak etc. In every polling booth there were as many ballot-boxes as the candidates and the voters were simply required to fold their ballot paper and put the same in the ballot of the candidate they wanted to vote for.



In all these ways the Election Commission made every possible attempt to make the voting in the general elections as much secret, fair, free and independent as possible.

### Conclusion

The two elections passed off in a most peaceful manner. They earned universal admiration for their efficiency and orderliness both at home and abroad. They were most disciplined, free and fair in every manner.



## CHAPTER 29

### POLITICAL PARTIES IN INDIA

#### Importance of Political Parties in a Democracy

Political parties are considered an indispensable condition for the success of democratic institutions.

In a Parliamentary Government, which is a Government by discussion and consent, political parties are indispensable because they provide an organised channel for peaceful outlet of the differences among voters on broad questions of national policy. They place alternative programme and policies before the electorate and educate it about their respective merits and demerits. The voters at the time of election listen to the view-points of different political parties and then cast their votes in favour of candidates coming nearest to their way of thinking. Thus political parties through peaceful and constitutional means endeavour to gain control of the governmental machinery in order to implement their programme and policy. The majority party runs the Government and the minority party exercises a healthy check on the abuse of powers by the ruling party by exposing its doings to informed criticism and public attention.

A democratic government postulates the existence of more than one political party. A single party leads to dictatorship. An ideal state of affairs is provided by two political parties, almost evenly balanced, each capable of giving to the country an alternative and stable party government. The existence of a larger number of parties leads to instability of government and to frequent changes of cabinets.

In U. S. A. and U. K., the two party system prevails. This ensures stability in administration and the continuity of policy of government with a minimum of bureaucratization. In Continental countries, such as France, there is a multiple-party system. This causes political instability, and results in the concentration of authority in the hands of civil servants to secure the continuity of administration. For obvious reasons, the former system is preferable to the latter.



## Political Parties in India

Parliamentary democracy in India being a recent innovation, we do not have any tradition of well-developed political parties. During the period of our struggle against British imperialism, the Congress was the symbol of a political movement. It was the rallying point for all fighters for freedom and did not represent a distinct ideology. That was why it included within its ranks people of different temperaments, convictions and outlook like the Communists, Socialists, Capitalists, Industrialists, Kisan Sabhaites, trade Unionists and so on. It is only after Independence that the Congress has assumed the role of a distinct political party with a clear ideology, programme of action and membership. On account of its past sacrifices and outstanding leadership, it occupies a dominant position in the political life of the country. There is no other party which comes anywhere near to it in respect of its influence, following, organisation or leadership. That is why Shri Jai Prakash Narayan said on the eve of the second general elections : "An effective opposition is the essence of parliamentary democracy. It is in this essential aspect that our democracy is seriously lacking. There is practically no parliamentary opposition today and we have a near to one party rule. This is a dangerous situation, particularly in the context of the growing power of an already too powerful bureaucracy, totally removed (at the higher levels) from the lives of the people ; and also in the context of the apparent drive towards State capitalism (which is the economic side of the shield of bureaucratism) and of the pernicious cult of personality which is sedulously being created."

Though the danger pointed out by Shri Jai Prakash Narayan is very real, particularly in the context of the widespread illiteracy and backwardness of the people, it is heartening to note that our electorate is sufficiently mature in a political sense. It realises the need for an effective opposition and has been giving an increasing measure of support to parties pledged to a clear-cut programme and policy. The case of the P. S. P. and the C. P. I. is an instance in point.

*Multiplicity of Parties.* But perhaps the one great danger in the political climate of India today is the multi-



plicity of political parties. During the last decade, so many new parties have come to the fore that they have left the electorate completely confused. There are at present four all-India parties and 16 State parties recognized by the Election Commission. The all-India recognized parties are : the Congress ; the Communist Party of India ; the Praja Socialist Party and the All India Bhartiya Jan Sangh. The State parties are as follows :

<i>Name of State Party</i>	<i>States in which recognised</i>
1. Forward Bloc (Marxist)	West Bengal
2. Hindu Mahasabha	Madhya Pradesh, Delhi
3. Ram Rajya Parishad	Rajasthan
4. Scheduled Castes Federation	Bombay, Punjab, Hyderabad, Himachal Pradesh
5. Revolutionary Socialist Party	Kerala
6. Chhota Nagpur and Santhal Parganas Janta Party	Bihar
7. Jharkhand Party	Bihar and Orissa
8. Peasants and Workers Party	Bombay, Andhra
9. Ganatantra Parishad	Orissa
10. People's Democratic Front	Andhra
11. Praja Party	Andhra
12. All India Socialist Party	Uttar Pradesh and Manipur
13. Maha Gujrat Janta Party	Bombay
14. Indian Union Muslim League	Kerala
15. Dravida Munnetra Khagagan	Madras
16. United Independent Front	Himachal Pradesh



*Basis of Recognition.* The recognition of the parties by the Election Commission is based on a minimum of 3 per cent votes polled by them in the general elections. The four All India Parties secured votes as follows in the general elections :—

	1951 Election	1957 Elections
Congress	45	47.7
Praja Socialists	10.6	8.9
Communists	3.3	8.4
Jan Sangh	3.1	4.6

Obviously enough, the multiplicity of parties is a great danger to the infant democracy of India. With one strong well-knit party in power and several minor parties in opposition the electorate is not given a fair chance of making a right choice. Even if it desires a change in administration, it cannot dislodge the party in power because the opposition votes are divided among a number of splinter groups. This is what actually happened in the 1951 and 1957 elections. On both these occasions, the Congress secured less than 50 per cent votes ; still it found itself in overwhelming majority both at the Centre and in almost all the States, except in Orissa, PEPSU, Madras and Travancore-Cochin in the 1951 elections and in Orissa and Kerala in 1957 elections, though even in these States it emerged as the largest or the second largest group.

#### Need for Two Parties

What is needed in the present context of the political situation of India is that there should be a polarisation of the political forces into a limited number (ideally two) of strong national parties, each capable of providing an alternative government. Only in such a situation can the ruling party remain sensitive to public opinion and responsive to criticism.

The question arises what party can throw an effective challenge to the Congress ? At one time it was believed that the P. S. P. was the only answer. But, during the last few years, many unfortunate circumstances have combined



together to push aside the claim of this Party for this unique honour. Firstly, the Congress has stolen the thunder out of the Socialist Party's creed by declaring its objective as the establishment of a socialist pattern of society. Secondly, the P. S. P. is a house divided against itself. It has been deserted by many party leaders. Even Shri Jai Prakash Narayan, one of its founders, has left active political work and joined the *bhoodan* movement as a *jeevandani*.

The Communist Party of India has, in recent years, emerged as the second most important political party in the country. Its influence is, however, confined to a few States in the south where the peasantry is in a particularly bad state. The greatest weakness of this party is its extra-territorial loyalties. The Jan Sangh, in spite of its election manifesto, is mainly a party of reaction and communalist renegades. As such, it does not have a very bright future before it.

Under the circumstances, it appears that an effective challenge can be thrown to the Congress only by a new democratic party, purely Indian in its origin and philosophy, which can promise a fair deal to the small peasants, the traders and the middlemen and ensure austerity and integrity in administration, by following the Gandhian ideals in letter and spirit. Will such a party be born out of the Congress, the Gandhian school of thought or in any other manner remains a big question mark ?

In the following pages we will discuss the programmes, the policies and organisation of some of the more important political parties in India.

#### THE INDIAN NATIONAL CONGRESS

We have dealt with the history, the origin, the growth and the part played by the Indian National Congress in the freedom struggle in the previous chapters. We will, therefore, confine ourselves here to a brief statement of its present programme, organisation and functioning.

#### Aim

Before independence, the most important objective of



the Congress was to gain political freedom of the country through peaceful and legitimate means.

After the attainment of freedom, the Jaipur session described the aim of the Congress as : 'the establishment of a co-operative commonwealth based on equality of opportunity and of political, economic and social rights, aiming at world peace and fellowship.'

At Avadi, the objective of the Congress was defined as the establishment of a 'socialistic pattern of society' wherein the principal means of production will be under social ownership or control and there will be equal distribution of national wealth. This change was formally incorporated in the Congress Constitution at its Indore session in 1957, by adding the word 'socialist' before co-operative commonwealth.

### **Programme**

Under the leadership of Gandhiji, the Congress adopted a two-fold programme : (i) political and (ii) constructive. In pursuance of the first programme, it waged a series of non-violent battles against British imperialism. In furtherance of the latter, it devoted its energies to nation-building projects like rural uplift, promotion of khadi and village industries, Hindu-Muslim unity, Harijan uplift, emancipation of women, etc. Even after the attainment of independence, this emphasis on the two-fold programme of the Congress has continued. However, in the changed context of things, the political work, namely, the participation in elections has come to acquire a more dominant place in the Congress politics.

### **Constitution**

In accordance with the needs of the situation, the Constitution of the Congress has been changing from time to time.

1899. For the first time the Congress framed its Constitution in 1899 at its Lucknow session. In it the objective of the Congress was defined as "to promote by constitutional means the interests and well-being of the Indian people"; Delegates to the Congress were to be elected by



political associations or other bodies and by public meetings. For the first time, an Indian Congress Committee of 45 members was set up to carry on the work of the Congress throughout the year. This was the forerunner of the present all-India Congress Committee. Seven provincial committees corresponding to the then existing seven Governor's provinces were also created.

**1907.** The 1899 Constitution with a minor amendment in 1900 held good until the unfortunate Surat split in 1907. The session of the extremists from the Congress in that year, however, made certain changes necessary. The Constitution was amended to say that the object of the Congress is the establishment in India of a system of government similar to that enjoyed by self-governing members of the British Empire and it was to be achieved by constitutional means. Anyone who had attained the age of 21 years could become a member of the Congress. The number of members to the All India Congress Committee was raised to 97.

**1920.** In 1920, the Nagpur Congress almost completely recast the Congress Constitution. Mahatma Gandhi had by now come to occupy a dominant place in the Congress and the rumblings of the first non-co-operation movement were being heard. He, therefore, sought to give the Congress organisation a mass basis. Its objective was declared as the attainment of *swaraj*. Its membership was thrown open to all and sundry. Anyone subscribing to the Congress creed and paying four annas as annual subscription could become its primary member. This made it possible to organise Congress Committees in every village.

**1934.** The Congress Constitution was again amended in 1934. Its objective was declared as the attainment of complete independence. Its offices were restricted to people who were habitual wearers of khadi, believed in Hindu-Muslim unity and were not members of any communal organization.

**1948.** After the attainment of freedom, a new Constitution for the Congress was adopted in 1948. This Constitution, with minor amendments passed in 1957, is still in



force. According to it, the membership of the Congress is divided into three classes : (1) primary membership which is open to any person of 21 years of age or over who believes in the Congress ideology, (2) qualified membership which is open to persons who are habitual wearers of khadi and believe in the constructive programme of the Congress ; (3) effective membership which is confined to members who devote regularly a part of their time to some form of national and constructive activity. Primary members elect the Primary Panchayats. They cannot stand for election. Only qualified members are eligible for election to primary Congress panchayats. Effective members can seek election to any Congress Committee.

### Constituents

The Congress comprises (1) primary Congress Panchayats at the base, (2) District Congress Committees at the district headquarters, (3) Pradesh Congress Committees in the State capitals and (4) All-India Congress Committee at Delhi. Its supreme body is a Working Committee consisting of a President, a treasurer and 18 members including one or more Secretaries. The President is elected for a three-year term by the delegates. He is the chief executive authority of the organisation. He appoints his own Working Committee from among the members of the All-India Congress Committee. The number of Ministers in the Working Committee cannot exceed one-third of the total membership of the Committee. The Working Committee elects a Parliamentary Board consisting of the President and 5 other members. It regulates and co-ordinates the parliamentary activities of the Congress legislative parties.

### Election Programme

In its election manifestos issued on the eve of the general elections in 1951 and 1957, the Congress declared its economic, social and political policies in the following terms :

*Economic.* The Congress stands for democracy and socialism and for peaceful and legitimate means. It believes in a planned approach to economic problems. Its objective is an economic structure which will yield maximum



production without creation of private monopolies and concentration of wealth. Its land policy is increased agricultural production, abolition of intermediaries and diversification of rural economy. Its industrial policy is the expansion of public sector specially in relation to basic and key industries and a growing co-operative sector. It is not, however, opposed to private enterprise.

*Social.* It believes in providing universal and compulsory primary education to all citizens. It considers basic education as specially suited to India. It advocates complete social equality, prohibition, emancipation of women, Hindu-Muslim unity, abolition of caste privileges, etc.

*Political.* The Congress pins its faith on secular democracy. It is against linguism and regionalism. Its foreign policy has for its objective the avoidance of war and the maintenance of friendly relations with all countries. It is opposed to cold war.

#### Strength in Legislatures

The strength of the Congress in the Centre and State legislatures is as follows :

#### 1951 Elections

#### 1957 Elections

1951 Elections			1957 Elections		
Seats contested	Seats won	Percentage of votes polled	Seats contested	Seats won	Percentage of votes polled
Centre 472	364	45.0	483	366	46.5
States 3,153	2,246	42.2	3,02	1,889	43.1

#### SOCIALIST PARTIES

There are several socialist parties in India. With minor differences in details, they all follow a common programme and policy. They believe in democratic socialism and call themselves Marxists. They differ from the Communist party in their tactics and methodology. While for the Communists ends justify the means, the socialists believe in achieving their ideal through peaceful and democratic means.



### The Praja Socialist Party

The oldest and the most important among the socialist parties of India is the Praja Socialist Party. In its present form it was born in September, 1952, when after the general elections, it was merged with the Kisan Mazdoor Praja Party. Before this, it was known as the Socialist Party of India (1948-52) and still earlier as the Congress Socialist Party (1934-48).

The history of this party goes back to 1930 when three comrades, Jai Prakash Narayan, Achyut Patwardhan and Asoka Mehta were lodged in the Nasik jail as fellow prisoners. They were all Congressmen but were inspired by the Marxist revolution in Russia and were troubled by the domination of their party by vested capitalist interests. They decided that after their release from prison, they will organize a leftists group within the Congress with a view to giving its programme a socialist orientation. The group was formally inaugurated in May, 1934 in Patna when Shri Jai Prakash Narain was elected as its Organising Secretary. The main function of this group consisted in checking the drift of the Congress towards compromise with British imperialism and strengthening it as instrument of struggle.

During the 1942 movement, the members of this group went underground and from there kept on an unceasing attack on British authority. At the end of war the Congress Governments in provinces returned to power and lifted the ban on the Congress Socialist Party. The socialist leaders came out of their hiding and met in a conference at Kanpur in March, 1947. Here they decided to organise themselves into an independent party, apart from the Congress. They dropped the word 'Congress' from its name and threw open the membership of the party to all Congressmen and non-Congressmen alike.

The reasons which prompted the socialists to leave the Congress and organise themselves into a separate party were :—

(1) The Congress had ceased to be a national front and it became a political party by its 1948 Constitution ;



(2) after independence the Congress had become the party in power. The need was, therefore, felt for an effective opposition to check authoritarian and totalitarian tendencies in the ruling party ;

(3) the socialists feared that the Congress Governments could not be trusted to bring about drastic economic and social reforms in order to establish a society based on equality and justice. It, therefore, took upon itself the task of establishing an egalitarian social order in India.

*The Programme of the Party.* The party declared its programme as follows :

The party believes in democratic socialism as opposed to totalitarian communism. It affirms that a decentralized democracy alone can ensure active association of people with public affairs. It, therefore, advocates village democracy and linguistic cultural autonomy. It is against the policy of mixed economy, followed by the Congress and advocates a planned socialist economy. It recommends the nationalisation of existing undertakings, at least of coal, iron and steel industries forthwith. It believes in social security for all citizens and conditions of full employment. On the question of India's relationship with the Commonwealth it believes in completely breaking off all British connections and in giving to India a completely independent and sovereign status. In matters of foreign policy, it believes that India should not align herself with either of the two rival power blocs but should lead a third force mainly composed of Asian nations.

*Election Reverses.* The party fought the first general election in India with a good deal of enthusiasm. It set up 255 candidates for the Lok Sabha and 1805 for the State Assemblies. It was, however, able to capture only 12 seats in the Lok Sabha and 128 in the State Assemblies.

*Causes of Failure.* The main reason for the failure of the party at the elections was the splitting up of the opposition votes into a number of rival parties. From the point of view of voting, the party did not fare too badly ; it got 10.5 per cent votes but captured only two per cent seats.



After analysing the causes of its defeat, it opened negotiations with other parties of the left to forge a united socialist front against the Congress.

*K. M. P. P.* The Kisan Mazdoor Praja Party responded to this gesture in an enthusiastic measure. This party had been organised by the veteran Acharya Kripalani just before the general elections at a convention held at Patna in 1951. It had many things in common with the socialist party :

(i) Both parties were once part of the Congress but left it because they were not satisfied with it, not so much with their ultimate goal as with measures adopted to achieve them. They felt the Congress was becoming more and more conservative, interested in maintaining the *status quo* rather than launching out bold plans to achieve economic and social progress.

(2) Both parties were pledged to adopting peaceful means for accomplishing social change.

(3) Both believed in democracy and socialism ; both wanted a classless society free from social, political and economic exploitation.

It was no wonder, that the two parties decided to merge into one at a joint meeting of their representatives held in Bombay in September, 1952.

*Differences.* This merger did not, however, prove an unmixed blessing. The K. M. P. P. believed in Sarvodaya. The socialists are wedded to Marxist's philosophy. It was therefore, an uneasy partnership. The cracks soon began to appear in the party. It was torn asunder into two groups, one called as rightists who had a soft corner for their parent organisation, the Congress and wanted to co-operate with it in broad matters of national policy and the other known as leftists who wanted to have no truck with the Congress leadership. Matters came to a head when Pandit Nehru invited Shri Jai Prakash Narayan to meet him to seek the co-operation of Praja Socialist Party in a joint and united effort for national reconstruction on progressive lines on governmental and non-governmental levels. A section of the party led by Shri Ram Manohar Lohia and Shri Madhu Limaye was so allergic to any talks of compromise with the Congress



that they attacked the bonafides of Shri Jai Prakash Narayan and others for even agreeing to meet the Prime Minister. This leftist group dominated the P. S. P. for some time. In December, 1953, the party declared at Allahabad that it would treat the Congress in the same way as it would treat the communists and its opposition to the Congress will be as strong and uncompromising as its opposition to the communists.

But the leftists did not stop at this victory. They wanted to set an example before the country as champions of civil liberty. When, therefore, in August 1954, the Patom Thannu Pillai's Socialist Ministry in Travancore-Cochin resorted to firing to quell disturbances arising out of demonstrations in Tamil-speaking areas of the State for merger with Madras, Dr. Lohia called upon the Chief Minister to resign. His stand was not, however, supported by the National Executive or the Convention of the Party held at Nagpur in November 1954. This brought the differences of his group with the rightists to a head.

The turning point in the party's history proved to be the acceptance of socialist goal by the Congress at Avadi. The Chairman of the party welcomed the Congress declaration as an evidence of the growing strength of democratic socialism. Lohiaites, however, called it a colossal fraud on the electorate and dubbed the rightists as collaborationists. Madhu Limaye, a leading supporter of Dr. Lohia, at this time launched some personal attack against Shri Asoka Mehta. On this he was suspended from the party. The Uttar Pradesh Party executive, however, supported the stand, and invited him to address their party conference at Ghazipur. This was treated as an act of indiscipline and the entire Pradesh Executive was suspended. Finally, in July 1955, Dr. Lohia was also expelled from the party. Many wavering socialists found in it an easy excuse to return to the Congress. Some of them actually did so including such party stalwarts as D. P. Misra, Choitram Gidwani, Maganlal Bagdi and Sucheta Kripalani.

On the eve of the second General Elections, the party suffered a tremendous organisational setback. Neverthe-



less, it put up a bold fight in the general elections and captured 19 seat in the Lok Sabha and 195 seats in State legislatures.

*Strength in Legislatures.* The strength of the P. S. P. in the Centre and State legislatures is as follows :—

1951 Elections			1957 Elections		
Seats contested	Seats won	Percentage of votes polled	Seats contested	Seats won	Percentage of votes polled
Centre 256 + 145 (KMPP)	12 (Socialists) + 10 (KMPP)	10.6 (Socialists) + 5.8 KMPP	176	19	10
States 1799 (Socialists) + 1005 (KMPP)	125 (Socialists) + 77 (KMPP)	9.7 (Socialists) + 5.1 (KMPP)			
			1,200	195	12

#### All India Socialist Party

The dissidents within Praja Socialist Party, under the leadership of Dr. Lohia, have organised themselves into a new party under the name of All India Socialist Party. The foundation conference of this party was held at Hyderabad in December 1955 with about 1000 delegates from all over India. At this conference, the Socialist Republican Party also announced its decision to merge with the All India Socialist Party. Dr. Ram Manohar Lohia was elected as the chairman of the party.

*Differences with P. S. P.* The main charge levelled by the Socialists against the P. S. P. is that the latter has become "paralysed", and that it engages in "radical talk" and "conservative action."

*Programme.* The party believes in the policy of 'militant socialism.' It has no faith in short-cuts to success and considers that "the shortest road to socialism is the straight road." It does not believe in election alliances and did not conclude any for contesting the 1957 elections. It chalked out a 12 point programme under a 5-year Plan for capturing



power in 1961. The programme includes civil disobedience movements wherever necessary, land to the tiller, removal of oppressive and vexatious taxes, fixation of minimum wages for agricultural labour and total remission of land revenue on profitless agriculture, job for unemployed, etc.

The Party contested about 500 seats for the Central and State Legislatures. It secured noteworthy success in U. P., Andhra and Madras where it gained 25, 10 and 5 seats respectively. It also captured 7 seats in the Lok Sabha.

#### THE COMMUNIST PARTY

The Communist Party of India was founded in 1924 but was soon declared illegal by the Government of India. Most of its workers suffered long terms of imprisonment in Meerut Conspiracy Case and other trade union movements. Some of them entered the Congress and in co-operation with the other leftists tried to give its programme and policy a socialist reorientation. It was mainly as a result of their influence that the Karachi session of the Congress in 1931 included in its goal the principles of economic democracy. Many communists also functioned independently in trade unions, student organisations and kisan sabhas to bring about a class consciousness into the minds of the workers, peasants and the intelligentsia.

*Outside Influences.* To a large extent the policies of the Communist Party have been guided by the developments in the international communism. Following the instructions of the 7th Congress of the Communist International, the Indian Communist Party adopted the policy of united front with the socialists, between the years 1936 and 1939. When war broke out in 1939, it characterised it as an "imperialist war" and called for stiff resistance to all war efforts. But Russia's entry into the war in 1941 changed its stand completely. It now began to call the war a "peoples' war" and called upon the people to support the war effort wholeheartedly.

When in 1942 the Congress, following the 'Quit India movement', went into wilderness, the Communist Party of India got a life's opportunity to organise itself and to expand its network far and wide in all parts of the country.



Its membership grew rapidly from 4,000 in July, 1942 to 15,000 in May, 1943, to 30,000 in January, 1944, and to over 50,000 by the summer of 1946. This mass contact enabled the party to become the second best political organisation in the country in the years to come.

In 1945 the Congress leaders were released. They branded the communists as traitors to the country and expelled them from the Congress. Thereafter the party started functioning as a distinct political party deriving its inspiration and guidance from Comintern.

Ideological conflicts, however, soon crept into the party. Two groups came to the fore-front; one of these known as the Joshi group pleaded for soft pedalling of the revolutionary programme of the party on the ground that the country was not yet ripe for socialism. The other group led by Ranadive insisted upon a militant policy of violent action. Matters came to a head when after the partition of the country, the 1948 Calcutta session of the party endorsed the Ranadive stand and called Joshi a right deviationist and expelled him from the Central Committee. The new strategy of the party was to form democratic front, under communist leadership to usher in the people's revolution. It was in the light of this programme that the 'era of terrorism' started in many parts of the country specially in Telangana in Hyderabad. The Central and the State Governments accepted this communist challenge and decided to meet strength with strength. The Central Government arrested many leaders of the party and banned the organisation in several States. Military action in Telangana drove the communists into the jungles. The party lost its popular support. In opposition to the All India Trade Union Congress which was controlled by the communist party, the Congress started the Indian National Trade Union Congress and the Socialist Party, the Hind Mazdoor Sabha. This weakened the communist hold on the Trade Union movement. The policy of terrorism failed completely.

It was about this time that communism triumphed in China. This victory compelled the Indian communists to give a second thought to their pattern of revolution. They



now thought of devoting more attention to peasant problems. Ranadive was made to resign from the party and in his place, Rajeswar Rao, the Andhra peasant leader, was elected as the Secretary. In October, 1951, he too was replaced by Ajoy Ghosh.

*1951 Elections.* In 1951, the party thought of fighting the general elections. The main stand of the party during these elections was to dub the Congress as "anti-democratic and anti-popular" as a protector of the "landlords, money-lenders and other exploiters, as being "under the influence of imperialist war-mongers, landlords and profiteers", as having "betrayed our freedom struggle" and as having allowed "the foreigners and the reactionary Indian interests to plunder and loot our people." It defined its own stand as one of championing the cause of the people, of freedom and of peace under a government of people's democracy on the basis of a "coalition of all democratic, anti-feudal and anti-imperialist forces in the country". Thus the party made out that the overthrow of the Congress was a national need for which all democrats had to get together. This was the basis of its call to all other parties to forge a united democratic front on the basis of a minimum programme.

In the first general elections, the communist party emerged as the second largest party in the country. It captured 26 seats out of 489 in the House of the People and 173 seats out of total of 3280 in the State Legislatures.

Flushed by its victory in the elections, the party made an attempt in co operation with other leftist parties to form coalition ministries in Madras, Travancore-Cochin and Andhra; but not only did these efforts fail, even the United fronts forged by it in some States like Andhra, Travancore-Cochin and Madras also broke up. Very soon the other parties realised that the fronts were being exploited by the communists for party ends.

*Period of Confusion.* In the period after 1952 elections, the communists were intrigued by the orientation of the foreign policy of the Government of India towards emphasis on friendly relations with the U. S. S. R. and the



People's Republic of China and its opposition to American aid to Pakistan, SEATO and the Baghdad Pact.

In 1955-56, Pandit Nehru went on a goodwill expedition to Soviet Russia and to eastern Democracies. Everywhere he was received as a champion of free Asia, the ambassador of peace and the great leader of a great people. Then followed the Chinese Premier's visit to India and the declaration of Panchsheel which was commended by all progressive-minded people. Towards the end of 1955 the Russian leaders came to India. They endorsed the principle of co-existence and praised the foreign and internal policy of the Nehru Government. In 1956, the 20th Congress of the Russian Communist Party admitted the weaknesses of the Soviet system and debunked the 'personality cult' of Stalin. Internally, the adoption by the Congress of the socialist goal added to the embarrassment of the communists. About this time they also lost the Andhra elections in which they were able to capture only 15 seats out of 150 they contested. All these factors added to the confusion within the ranks of the party. In its Palghat session in April 1956, the party re-examined its stand vis-a-vis the Nehru Government, and though it was unable to lay down a clear-cut policy, it recognised the good points in the foreign policy of the Congress and the limited advance the country had made under the first Five Year Plan. It called for the formation of democratic front, as opposed to the 1951 united front against the Congress. It recognised Praja Socialists and other socialist parties as parties of democratic opposition. It declared that parliamentary form of democracy will be retained in the socialist state of their conception and also that opposition parties will be allowed to function. This was a radical departure from the orthodox communist line.

*1957 Election Programme.* For the 1957 elections the party laid down its programme as follows : (1) severance of India's connections with the Commonwealth ; (2) abolition of landlordism without compensation ; (3) nationalisation of foreign industries and capital ; (4) development of industries with nationalised capital ; (5) living wages for workers ; (6) abolition of police force and organisation of



national militia ; (7) full recognition of civil liberties ; (8) linguistic reorganisation of States ; (10) employment for all and conditions of full social security.

*The Outcome of the Elections.* In the 1957 elections the Communist Party bettered its record both in the Centre and in the States. It captured 29 seats in the Centre and 162 seats in the States. It emerged as the largest single party in Kerala and was able to form a Government with Shri Namboodripad as Chief Minister. In April, 1958, the Communist Party made a further change in its constitution, programme and policy. At its special session convened at Amritsar, it declared its objective as the attainment of socialism by peaceful and democratic means. It thus gave up the creed of violence and opposition to a system of Parliamentary democracy.

The following table gives the voting analysis for the Party in the 1951 and 1957 elections :

1951 elections			1957 elections		
Seats contested	Seats won	Percentage of votes polled	Seats contested	Seats won	Percentage of votes polled
Centre 69	26	5.0	116	27	9.8
States 465	106	4.38	600	162	11

#### Other Left Wing Parties in Indian Politics

There are some other Left Wing socialist parties also in Indian politics. Their number was quite large at the time of the 1951 general elections. Since then the realisation that the multiplicity of parties, without adequate organisational strength, neither helps the cause of democracy nor the interests of the party, has induced a large number of them to seek merger with the bigger parties. Thus the *Forward Bloc* (Ruikar Group) decided to return back to the Congress in 1955. Meeting at New Delhi in March 1956, the party decided to dissolve itself because the Congress had



accepted the socialist goal and adopted a progressive and dynamic foreign policy. A day later the general council of *Krishikar Lok Party* decided to re-enter the Congress. The party had earlier aligned itself with the Congress in the Andhra elections. It announced that the removal of controls, the decision to establish a State Bank to provide rural credit facilities, efforts to stabilise agricultural prices and the economic policy of socialism announced at Avadi had finally removed all misgivings and apprehensions in the minds of its members and they were deciding to merge themselves with the Congress.

While some leftist groups thus merged with the Congress, some others have joined the communist ranks. Thus the Bolshevik Party of India, the Revolutionary Communist Party and the Lal Party have merged themselves with the communist party in recent years.

The emergence of the Praja Socialist Party also represents a merger between the former Socialist Party and the K. M. P. P. of Acharya Kripalani.

The narrowing of party divisions in the opposition ranks represents a healthy tendency in Indian politics. If this process continues and we ultimately have two or three well-developed political parties in the country, it will augur well for the future of political democracy in this ancient land.

#### THE BHARTIYA JAN SANGH

If the Congress represents a middle party and the Socialists and Communists the leftist forces in the country, we can very well say that the Jan Sangh represents a party of the right. It was founded in 1951 by the late Dr. Shyama Prasad Mookerjee. Within less than 6 years of its existence, this party has emerged as the fourth largest political party in the country, though its influence is still confined to a few States of the North, particularly, Punjab, Uttar Pradesh, Delhi, Madhya Pradesh and Rajasthan. Of late the party has been gradually building up its organisational strength in other States as well. The death of its founder-President, Dr. S. P. Mookerjee in June 1953 and the resignation of its acting President, Pandit Mauli Chandra



Sharma, in 1954 dealt a severe blow to the organisation. But it has been able to keep up its strength owing to the support of a band of fanatical young men who are inspired by the ideal of Bhartiya culture.

Among the major activities of the Jan Sangh during the last few years, mention may be made of the Praja Parishad agitation in Jammu and Kashmir for the State's complete unification with the Indian Union and the Maha Punjab agitation in Punjab against the demand of the Sikhs for a Punjabi-speaking State. A part of the credit for the events leading to the irrevocable integration of the Jammu and Kashmir State in the Indian Union can be given to this party.

After the death of Dr. Mookerjee and even earlier during his life-time, attempts were made to merge the Jan Sangh with the Hindu Mahasabha, Ram Rajya Parishad and the Gantantra Parishad of Orissa. In spite of great hopes raised on many occasions, the final merger did not take place on account of the reluctance of Hindu Mahasabha to lose its identity and of the Ram Rajya Parishad to permit the entry of the Harijans into the party. It is possible that after the recent debacle of these two parties in the last general elections, the talks for merger may be revived once again.

*Programme.* The Jan Sangh aims at democracy, nationalism, unitary form of government and full integration of the Jammu and Kashmir State with the rest of India together with greater attention to national defence. Its economic objectives are a fair deal to the common man through abolition of sales tax and reduction in other direct taxes, appointment of a national wage board and guarantee of economic minimum to all through decentralisation of economic power and a fair field for private enterprise.

*Election Record.* The following table gives the present strength of the Jan Sangh in the Union and State legislatures and votes polled by it in 1957 elections :

## 1951 Elections

## 1957 Elections

Seats contested	Seats won	Percentage of votes polled	Seats contested	Seats won	Percentage of votes polled



Centre 83	3	3.1	103	4	5.7
States 717	35	2.7	800	46	4.6

During the years 1957 and 1958, the Jan Sangh increased its strength by successfully contesting several by-elections to state legislatures. It was able to capture 27 seats out of 980 in the general elections to the Delhi Municipal Corporation. Later, the candidate supported by it won a thumping victory in the Lok Sabha election from the Gurgaon parliamentary constituency.

### Miscellaneous Parties

Besides the four all-India parties recognised by the Election Commission there are a number of other minor parties in the country. These work in a limited sphere and their influence is confined to particular States.

*Peasants and Workers Party.* One such party is the Peasants and Workers Party. Its influence is mostly confined to Maharashtra. It was led till recently by Shri S. S. More and K. M. Jedde. The former returned back to the Congress in 1956. In spite of this setback the party won notable successes in the 1957 elections. It captured 4 seats in the Lok Sabha and 30 seats in Bombay Assembly. In the 1951 elections it was represented by only one member in the Lok Sabha, 14 members in Bombay, 14 in Hyderabad and one in Madhya Pradesh.

*Programme.* The party has defined its aims as the establishment of a people's democratic Government of workers and peasants, abolition of landlordism without compensation, redistribution of land, abolition of usury and guarantee of minimum living wage for peasants.

*Gantantra Parishad.* This party was formed in 1950 by the ex-rulers of Orissa and Chhattisgarh States. It is a feudal party depending for its strength on the personal allegiance of backward Adivasi people for whom the Maharajas are almost demi-gods. The immediate cause for the formation of the party was the agitation on the question of the merger of two small States, Seraikella and Kharaswan with Orissa instead of with Bihar. It has now an economic programme also almost as ambitious as that of the Praja



Socialist party. The party captured 31 seats in the Orissa Assembly in the 1951 elections. Its present strength in the Assembly is 51 seats. It is also represented by 7 members in the Lok Sabha.

*The Hindu Mahasabha.* This party was started in the year 1923 by Pandit Madan Mohan Malaviya and Lala Lajpat Rai with a view to consolidating the Hindu community and safeguarding it against the onslaughts of other religions, specially the movement of conversion launched by the Muslims. The main programme of this party is to promote Hindu solidarity and to work for the establishment of a Hindu *Rashtra*. Like the Congress it does not accept the creation of Pakistan as a closed issue. Its policy towards that State is based on the principle of reciprocity. It seeks to establish a really democratic State in Hindustan based on the culture and traditions of the land.

For some time, after the assassination of Mahatma Gandhi, the Hindu Mahasabha decided to keep aloof from politics. But soon after, it reversed its decision and decided to re-enter politics. In the 1951 elections the Mahasabha polled less than 1 per cent of votes. It captured 4 seats in the House of People and 19 seats in State Assemblies. Its record in the 1957 elections turned out to be much poor. At present it is represented by only one member in the Lok Sabha, 7 members in the Madhya Pradesh Assembly and one in the Bombay Assembly.

*Ram Rajya Parishad.* This party was formed on the eve of the 1951 elections by Swami Karpatriji. The party stands for Akhand Bharat and for the maintenance of the integrity of the Hindu community according to vedic principles. It is opposed to the Hindu Code Bill and calls for the repeal of Temple Entry Legislation.

The influence of this party is mainly confined to Rajasthan where it captured 32 seats in the 1951 elections. During recent years its influence has greatly declined. In the last general elections it was able to capture only 17 seats in Rajasthan Assembly and was completely routed in the other States.



*Scheduled Castes Federation.* This party was established by the late Dr. B. R. Ambedkar. It has no political and economic programme. It merely stands for safeguarding the interests of the scheduled castes. Its influence is mainly confined to Bombay, Madras, Andhra and Punjab. It has at present a strength of 6 members in the Lok Sabha, 1 member in Andhra, 12 members in Mysore and 5 in Punjab.

*The Muslim League.* The Muslim League was the second largest party in India before partition. It captured a majority of Muslim seats both in the Central and provincial legislatures on the occasion of the general elections held in 1946. After partition, the main party established itself in Pakistan where after some years of misrule, it has been dislodged from power both at the Centre and in the two States. In India, the party is at present confined to Madras and Kerala States. In all other States it is more or less defunct though attempts are sometimes made to resurrect it in one form or the other. In the secular democracy of India based on joint electorate it has no future to look forward to.



## CHAPTER 30

### WORKING AND EVALUATION OF THE CONSTITUTION

In the preceding chapters of this book, we have dealt in brief with the structure, organisation and the main features of our Constitution.

The period of about nine years during which the Constitution has been in operation so far, is very short to enable us to make a correct assessment of its success or otherwise. It is only after a decade and more when parliamentary traditions are well developed that it will be possible to pass judgment with a certain amount of confidence whether the democratic experiment in India has succeeded or not.

#### Working of the Constitution

In the meantime, one may say without any fear of contradiction, that the Constitution has worked fairly well. India is at present engaged in putting the concept of a Welfare State into action, and that through the democratic process. We are advancing towards this goal in gradual stages. The democratic process requires a great deal of training in the working of parliamentary institutions. Our legislators, both at the Centre and in States, have acquired a good deal of familiarity with the form and working of such institutions. It is true that a strong opposition has not yet developed in our legislatures. The Congress Party still holds the dominant position both at the Centre and in almost all the States. But strong Opposition Groups, based on distinct ideology and economic programmes, are gradually making a headway. Such Groups are quite vocal and they are led by eminent public men. The Congress Party, through internal criticisms and party discussions, also partly fulfils the role of Opposition. Led by a true democrat, Pandit Jawaharlal Nehru, it is not intolerant of criticism, but gives full scope for the ventilation of public grievances by the opposition parties. Thus healthy parliamentary traditions are being laid down in India.



We will discuss below some of the more important features of the working of our Constitution and try to assess, how far they can be described as satisfactory.

#### ELECTIONS

We have so far had two general elections under the new Constitution. Both these elections have won universal admiration for their efficiency and orderliness. They were termed as fair, free and impartial by almost every section of public opinion. In the first General Election there were as many as 175 million voters, more than in any other democracy of the world. In the second General Election of 1957, even this massive figure was surpassed as the number of eligible voters rose to 195 million. The actual number of voters who cast their votes in the first general election were 130.8 million. In the subsequent election, the number went up to 112.3 million, thus raising the percentage vote from 44.9 per cent in the first General Election to 49.2 per cent in the Second.

The parties which took part in the election were generally agreed on the Government's foreign policy, though the Communist Party favoured greater collaboration with the Soviet Bloc. The elections were, therefore, fought mainly on national and local issues. The Congress Party favoured planned development of the country on the basis of a mixed economy. The Communists raised the cry of 'land to the tiller', 'nationalisation of key industries', and 'expropriation of foreign capital'. The Praja Socialists based their appeal mainly on agrarian reform and labour welfare. The Jan Sangh raised the cry of Hindu culture.

The voters showed a remarkable sense of discrimination in casting their votes. They generally favoured those parties which had a clear-cut programme and policy. That explains the reason for the poor performance of the Praja Socialists and the Jan Sangh. The Communists fared much better.

The Congress Party, being the largest and the best organised political Party in the country, captured the maximum number of seats in the Parliament and State Legislatures. The Communists gained control of the Kerala Assembly in the 1957 elections. They also gained a good



number of seats in West Bengal, Orissa, Madras, Andhra and Punjab.

Some disquieting features of the two general elections which came to the surface may also be mentioned here.

Firstly, these elections proved that caste loyalties still make a powerful impression on the minds of voters. All the political parties, including the Congress, therefore, keep this factor in mind in making their selection of candidates. This is a most undesirable practice as it cuts at the root of all known democratic precedents. Fortunately, the caste slogan carries weight only with the uneducated voters; it does not carry much conviction with the educated people in the cities. It is, therefore, hoped that with the spread of education and general enlightenment among the people, the Indian voters would be able to exercise greater discrimination in the choice of their candidates. Like caste, regional and linguistic considerations also carry a good deal of influence with the voters. That explains the reason for the unprecedented success of regional groups like Maha Gujrat Parishad and Sanyukt Maharashtra Parishad in Bombay in the last general elections. But like casteism, linguism and regionism are also likely to prove a passing phase in Indian politics.

Secondly, the last two elections have shown that we are yet too far from the stage when another political party in the country can throw an effective challenge to the Congress and present the prospect of forming a stable alternative government at the Centre. The opposition parties, however, seem to be fully conscious of this fact, and of late, a tendency is discernible by which minor parties in opposition are tending to merge with larger groups to avoid the splitting up of opposition votes. Already a United Socialist Party under the leadership of Acharya J. B. Kripalani has emerged in Union Parliament and negotiations are going on for merger of the socialist and the Paraja Socialist Parties.

#### SECULAR DEMOCRACY

The experiment of secular democracy has also proved quite successful. Though Muslims and other minorities have not been provided with any reservation of seats, quite



a large number of candidates belonging to the minority groups are functioning within our Parliament and the State Assemblies. The religious, cultural and linguistic right of all minorities have been fully safeguarded. In fact, the A. I. C. C. in its May 1958 session held in Delhi called upon the State Governments to accord Urdu its rightful place as one of the regional languages. Women have also been given due representation in the legislatures. In fact it has been said that there are more women legislators in India in services and in administration. In the 1957 elections, 27 women were returned to the Lok Sabha, 23 to Rajya Sabha and 195 to state legislatures. Women are functioning as Ministers, Deputy Ministers and Parliamentary Secretaries. They also hold important posts in administration, including foreign services.

#### FUNDAMENTAL RIGHTS AND THE SUPREME COURT

It is said that the true test of the excellence of a government is the extent to which it is able to safeguard individual liberty and freedom of its citizens. The democratic state which recognizes and values the personality of the individual must create conditions favourable for the individual to rise to the highest stature of his being. As J. S. Mill has said, "A State which dwarfs its men, in order that they may be mere docile instruments in its hands, even for beneficial purposes-will find that with such men no great thing can really be accomplished".\*

It has to be remembered, however, that the concept of liberty is not absolute. Liberty means freedom to function within the bounds of law. The Indian Constitution confers on its citizens the right to equality, the right of freedom, the right of religion, the right to education, the right to property, the right against exploitation and the right to constitutional remedies. It, however, makes it clear that the exercise of these rights will be subject to reasonable restrictions imposed by the State in the interests of law and order, security of state and of public weal. It is sometimes said about these restrictive provisions that they have made the enjoyment of rights completely illusory. It is further said that

---

\* J. S. Mill—*On Liberty*, p. 89.



during the last eight years, our Constitution has been amended seven times, each time restricting the scope of individual freedom. By contrast it is said that, though the American Constitution was also amended 12 times, within three years of its coming into being, the purpose of those amendments was to widen the scope of freedom. The Preventive Detention Act is cited in furtherance of this argument. It is said that in no other democratic country do we have such an Act which permits even in normal peace times detention of persons as a precautionary measure.

There is much force in the above arguments, though it has to be remembered that some extraordinary steps have been taken in the case of India to deal with an emergent situation. The Preventive Detention Act is meant to combat the anti-social activities of certain elements which are harmful to the best interests of the country. This Act has now been liberalised, permitting the detenues fourfold rights, *i. e.*, the right to be informed of the grounds of detention as soon as may be, the right to make representations in answer thereto, the right to a personal hearing before the Advisory Council, and lastly, the right to an order of confirmation or release in accordance with the Council's opinion.

Further, the Supreme Court of India stands as the greatest guarantee of the freedom of the individual and of the protection of his fundamental rights. By the liberal interpretation of the provisions of the Constitution it has safeguarded the individual against the arbitrary authority of the State. In regard to preventive detention cases, it has insisted that the grounds served on the detenue shall not be vague or indefinite. In the absence of such grounds, it has not hesitated in holding the detention as illegal and in releasing a large number of detenues.\*

The Supreme Court has further safeguarded the liberties of the citizens by holding as invalid laws and executive orders authorizing the executive to restrict the movements of persons or declaring associations unlawful or restricting

\*Tarepade *v.* State of W. Bengal (1951) S. C. J. 233 ; Ananta *v.* State A. I. R. (1951 Orissa 22) Kulomini *v.* the State A. I. R. 1950 Orissa 20. Ram Singh *v.* State of Delhi (1951 S. C. J. 374).



circulation of printed material or imposing pre-censorship on newspapers. In the well-known case, the State of Bombay *Vs.* Bombay Education Society, it upheld the decision of the Bombay High Court declaring that its circular prohibiting the entry of non-Anglo-Indian or non-European students to schools in which the medium of instruction was English was invalid, on the ground of being discriminatory. In another case State *Vs.* V. G. Rao (1252), S. C. R. 597 the Supreme Court quashed the Madras Government Order of March 21, 1950 declaring the Madras Peoples' Education Society unlawful under the provisions of the Criminal Law Amendment (Madras) Act. It held that the Governmental Order imposing unreasonable restrictions upon the freedom of individuals to form associations within the meaning of clause (4) of Article 19 of the Act was invalid. In another case Singh *Vs.* Pepsu (41 A. I. R. 274 it ordered the release of persons held in preventive detention for distributing pamphlets making serious accusations of improper conduct by a high judicial officer. In this case, the court held "the allegations in the pamphlets are calculated to undermine the confidence of the people in the proper administration of justice in the State. But it is too remote a thing to say, that the security of the State or the maintenance of law and order in it would be endangered thereby."\*

Our Constitution does not guarantee to the citizens an unfettered right to private property. The Supreme Court has concurred in this view and it has liberally interpreted the Constitution to subserve the ends of social justice. It has allowed the State in public interest, to acquire private property, provided the compensation fixed by the legislature is duly paid. It may, therefore, be said that during the short period of its existence, the Supreme Court has functioned in a way as to uphold the rule of law and reconcile individual liberty with the interests of society. It has allowed itself neither to be termed as the hand-maid of the Executive nor the protector of vested interests. It has functioned independently and impartially and striven hard to strengthen the roots of liberty in the country.

---

\*17 Supreme Court Journal 678.



## PARLIAMENTARY DEMOCRACY

**Pre-requisites of Parliamentary Democracy**

The framers of our Constitution preferred the model of parliamentary democracy to serve the best interests of the people. The success of such a democracy, however, depends on the fulfilment of certain essential conditions. Parliamentary democracy, for example, requires a high degree of political capacity, a political consensus on broad questions of policy and a spirit of compromise and tolerance among various sections of people. It presupposes that the majority party, in all major decisions of policy, will carry the minority party along with it, and its judgment in such matters will reflect the will of the nation rather than of the party. There is equally an obligation on the part of the minority to respect the judgment of the majority. The other essential factors for the success of parliamentary democracy are : the presence of economic equality and political stability.

**Parliamentary Democracy in India**

Parliamentary democracy, in its modern concept, is no doubt new to India; but there are certain traits in our national character and other factors existing in the country which are favourable to its growth. Firstly, the people of India are by nature peace-loving. They wish to settle their problems by peaceful action and not by resort to force. Secondly, the tradition of panchayat system in India is centuries old. It suffered a temporary eclipse during the British regime, but has now been fully revived. It represents the focal point of the community life in the villages and has now taken on its shoulders all schemes of community development. Thirdly, the people's participation in national plans at all levels has imparted them the necessary training in self-government. Fourthly, the Congress Party has gained invaluable experience of the working of representative institutions at all levels of government for over twenty years. It has, therefore, grown familiar with parliamentary forms and procedures. Fifthly, the ruling party, under the outstanding leadership of Pandit Jawaharlal Nehru, is striving hard to better the lot of the toiling millions. In this task, it is enlisting the co-operation of all sections of people. It hopes that



by implementing the Second Five Year Plan, it will lay the foundations of a real political, economic and social democracy in our land.

By what has been said above, it is not intended to convey the impression that there are no impediments to the success of parliamentary democracy in India. We have our own problems of casteism, linguism, regionalism and religious fanaticism. These cut across the principle of democratic equality. It is, however, hoped that with the progress of education all these evils will disappear and our people will be able to inculcate the right type of civic virtues in them.

Another great impediment to the success of parliamentary democracy in our country is the absence of well-organised opposition parties. It is, however, heartening to note that whatever opposition groups exist in the country are given due importance in the working of legislatures. They are associated with the various sub-committees of the chambers such as the Business Advisory Committee, the Assurance Committee, the Delegated Legislation Committee. The Rules Committee, the Estimates Committee, the Public Accounts Committee, etc. Further, the Opposition Groups play a constructive role in the politics of the country. They do not merely indulge in irresponsible criticism of the ruling party, but support it overbroad questions national and foreign policy. They evaluate each governmental measure on its merits and support it if, in their opinion, it would prove of lasting benefit to the people.

#### STATE AUTONOMY

It was feared that under the new Constitution the States may not be able to enjoy complete autonomy in their internal administration and the Centre may interfere in their affairs from time to time. All such fears have proved groundless. There has been utmost co-operation between the Centre and all the State Governments. There have been no complaints of undue interference in their internal administration. Even in States where the non-Congress Ministries have functioned or are at present functioning, there has been complete harmony with the Central Government.



The Communist in Kerala enjoys full support and goodwill of the Union Government. It has been given more than liberal treatment in the allocations under the Second Plan. The Education Bill passed by the Kerala Ministry in September 1957 became for a time the subject-matter of some controversy. The President referred this Bill for the opinion of the Supreme Court, which in its judgment delivered in May 1958 held that certain provisions of the Bill were violative of minority rights and offended against article 30 of the Constitution.\* In this way, this controversy was satisfactorily resolved.

In the working of parliamentary democracy in the States some new conventions were established. The Governors acted more or less as constitutional heads. They did not interfere in the working of their Ministries. In some cases, however, where the Governors were advised by their defeated Chief Ministers to dissolve the legislature and hold fresh elections, they acted in their discretion. They did not strictly follow the British practice in this regard. Instead, they adopted the practice prevalent in the Dominions. They first explored all possibilities of forming an alternative stable Ministry. In 1954, for example, the Rajpramukh of Travancore-Cochin did not dissolve the State Assembly, when asked to do so by the defeated Pillai Ministry. Instead, he sought and succeeded in forming an alternative Ministry. In Andhra State, however, an opposite practice was followed. There on the defeat of the Congress Ministry headed by Shri T. Prakasam, the Governor, Mr. Trivedi, did not explore the possibility of forming an alternative Ministry. Instead, he dissolved the Assembly and imposed the President's rule, the reason being that he was not sure of an alternative Ministry proving stable. In Orissa the Mahtab Ministry feeling that its effective strength in the Legislative Assembly was thinning by some defections, tendered its resignation to the Governor in May 1958. The latter invited the leader of the Gantantra Parishad to give him a list of his supporters so that he could form an idea if the Party

---

\*The Court held that provisions of clause 3 (5) by making aided educational institutions subject to clauses 14 and 15 as conditions for the grant of the aid offended against Art 30 (1) of the Constitution.



enjoyed a majority support in the House. This was not done. In the meantime, the Congress won in some by-elections in the State. The Governor, therefore, asked Mr. H. K. Mahtab to withdraw the resignation of his Ministry, which the latter did. The question is asked if the Governor was justified in not accepting the resignation, of the Mahtab Ministry? It is held that the Governor was right in trying to assess the situation and that his action in asking Mr. Mahtab to withdraw his resignation, once he was convinced that he enjoyed the confidence of the majority, was perfectly constitutional.

#### GOVERNORS AND THEIR MINISTRIES

Our Constitution has conferred extensive powers on the Governors of States. In actual practice, however, the exercise of such powers is to be limited by convention and by legislative procedure. What are the conventions that have developed in this field? Can we call such conventions healthy and sound?

Take the question of the appointment of Governors in the first instance. It is felt that for this non-political job, too much emphasis is laid on the selection of safe party men. It is true that some outstanding non-Congress leaders have also been appointed to gubernatorial gaddis. The cases of Sir Homi Mody, Fazl Ali, Sukhtankar, G. L. Trivedi, etc., are instances in point. But, by and large, only leading Congressmen have been called upon to fill these high posts. The obvious danger in such appointments is that in case a non-Congress Ministry, as in Kerala, happens to be installed in a State, the Governor, owing allegiance to a different political party, may not act in quite the same detached fashion as is expected of such a high political functionary. The need for the selection of retired High Court Judges or Senior Civilians or non-party leaders to such posts has, therefore, been emphasised in some quarters. Another unhealthy tendency which has been noticed in this connection is that defeated party candidates are installed in these high posts. The cases of Shri V. V. Giri and Shri H. V. Pataskar are instances in point. It is said that this practice, besides being undemocratic, is likely to affect the prestige of the persons



holding the posts, by making them subservient to the party bases. It cannot, therefore, be described as a healthy practice.

Coming to the role of the Governors in State Administration, while it would be true to say that most of them have acted as constitutional heads, some of them have also acted differently, and set up unhealthy precedents. The cases of Orissa and Kerala Governors may be cited in this connection. In Kerala, at the end of the general election, the Governor did not consult the leader of the majority party in nominating an Anglo-Indian to the State Assembly. He did not also accept the assurance of the Communist Party that he enjoyed the support of five independents, and proceeded to consult the members concerned, individually. Perhaps from a strictly constitutional angle, the Governor was justified in doing so in view of his special responsibility to the minorities and his desire to ensure the smooth operation of the Constitution, but from the point of view of inspiring confidence in the Ministry and maintaining good relations with his Ministries, it was an improper step which smacked of partisan attitude.

In Orissa, the Governor acted in his discretion on two different occasions. Firstly, at the end of the second General Elections, when no single party commanded a majority in the legislature, he invited Dr. H. K. Mehtab to form the new Ministry in the State. The leader of Gantantra Parishad held that his Party had the support of at least 63 members, whereas Dr. Mehtab had the support of only 61 members. Secondly, as pointed out earlier, in May 1958, the Governor did not accept the resignation of the Mehtab Ministry and asked it to continue in office.

In both these cases, the Governor was accused of acting as a partisan, though his stand was fully justified by constitutional practice. The Governor has to form an independent judgment in such cases to find out who, in his opinion, enjoys a majority support in the Legislative Assembly. In Orissa, his action was justified by later events.

It would not be out of place to mention here the cases of the appointment of Shri C. Rajagopalachari and Shri



Morarji Desai as Chief Ministers of Madras and Bombay States respectively. As is well known, Rajaji was invited by the Madras Governor to form a Ministry in Madras, after he was nominated as a member of the Legislative Council. A worse precedent was set up in Bombay when even after the defeat of Shri Morarji Desai in the 1952 General Elections, he was nominated a member of the Legislative Council and called upon to form the Ministry. Both these events, though perhaps justified by the exigencies of the situation, have not gone in the direction of setting up healthy traditions in parliamentary democracy.

#### EMERGENCY POWERS OF THE PRESIDENT

There were hardly any occasions when the President was called upon to use his emergency powers or to use his veto in respect of State legislations. Only in the case of four States, *viz.*, PEPSU, PUNJAB, Andhra and TRAVANCORE-COCHIN, the Constitution was suspended for brief periods. No sooner than the emergency was over responsible government was re-established in all these States.

*Pepsu.* After the first General Elections, the first non-Congress Ministry in any State was formed in Pepsu by S. Gian Singh Rarewala, leader of the United Front. This Ministry voluntarily resigned office on March 1, 1953, after the election of its leader and two other Ministers was declared as invalid by the Election Tribunal. The Rajpramukh finding that an alternative Ministry may not prove stable, requested the President to issue a proclamation of emergency under Article 356 of the Constitution. This was done and fresh elections were ordered to be held in the State in February 1954. On 8th March 1954, the President's rule was revoked and the Congress, which captured majority of seats in the election, was installed in office.

*Punjab.* In Punjab, the declaration of emergency in June 1951 was necessitated by the internal bickerings within the majority party and by complaints of inefficiency and corruption in State administration. There were two rival groups within the Congress Legislature Party—one led by Dr. Gopi Chand Bhargava and the other by Shri Bhim Sen Sachar and S. Pratap Singh Kalron. On April 3, 1951, a



vote of no-confidence was moved in the leader of the Assembly Congress Party by Sardar Pratap Singh Kairon. The motion was defeated by 35 votes to 31. The Congress Parliamentary Board, however, considered this result as indecisive and directed Dr. Bhargava to reshuffle his cabinet in consultation with Shri Bhim Sen Sachar and Sardar Pratap Singh Kairon for forming a Government strong enough to deal with the rising communal trouble and the problems of a border State. Dr. Bhargava submitted a panel of 10 names to the Parliamentary Board. His list included six existing Ministers and 4 representatives of the opposition groups. The Parliamentary Board rejected this list and instead suggested a team of six ministers including one existing member of the Cabinet, two representatives of opposition, two independents, and one nominee of Dr. Bhargava. Dr. Bhargava informed the Board that he was unable to accept this list. On this, the Parliamentary Board, on June 11, 1951 decided that Dr. Bhargava should resign, and that to prevent internal conflicts within the Congress Party, alternative Government should be formed. Dr. Bhargava, therefore, tendered his resignation on June 16, 1951 and the President's proclamation was issued on June 20, 1951. It remained in force till the first General Elections were held in 1952 when Shri Bhim Sen Sachar became the Chief Minister.

It may be said that the imposition of the President's rule in Punjab was incompatible with democracy, especially when Dr. Gopi Chand Bhargava enjoyed the support of 40 out of 70 members. In the large interests of the State, however, it was found necessary to impose this rule with a view to saving the border State from political intrigues, communal strifes and party bickerings. It should also be borne in mind that Dr. Bhargava was not dismissed from office. He resigned his office at the instance of the Congress High Command.

*Andhra Pradesh.* The President's Proclamation in Andhra was issued on November 15, 1955, after the Congress Ministry in that State, headed by Shri T. Prakasham resigned on sustaining defeat over its policy of prohibition. Mr. Prakasam advised the Governor to dissolve the Assembly



although he himself expressed his unwillingness to form the 'Care-taker' Government, pending the elections. The Governor acting on this advice requested the President to issue a proclamation dissolving the State Assembly and introducing the Governor's rule pending new elections in February 1955.

*Travancore-cochin.* The breakdown of the constitutional machinery in Travancore-Cochin followed the resignation of the Congress Ministry, led by Shri Panampalli Govinda Menon, on March 11, 1956. The Ministry resigned because of the defection of 6 members of the Congress party reducing it to a minority. The party position in the dissolved Assembly was : Congress 60 (including 6 rebels) ; Communists 27 ; Praja Socialists 15 ; Revolutionary Socialists 9 ; Keraia Socialists 3 and Independents 3.

Soon after the resignation of the Ministry, Mr. Pattam Thanu Pillai, the Praja Socialist leader, claimed that he had the support of 61 members of the Assembly out of 118. This claim was not fully substantiated as the Leftists wavered in their support to him. The state legislature was therefore, dissolved and the President's proclamation was issued in March 1956, assuming to himself the functions and powers of the Government of Travancore-Cochin. This rule lasted till the General Elections of 1957.

*Conclusion.* The above review of the working of our Constitution establishes that despite a few failings here and there, the Constitution has on the whole worked admirably well. It would, however, be useful to study the conditions under which parliamentary democracy can be a still greater success in our country.

Firstly, it is very necessary that the bane of casteism, which dominates partly affiliations and public appointments in our country, should disappear altogether. Our political parties should be organised on broad questions of national and economic policies.

Secondly, if party intrigues and bickerings prevailing in most of our States are to be ended, it is very necessary that our coming generations are imparted the right type of civic training in the schools, colleges and universities. The future of the country lies in the hands of young men and it



is, therefore, imperative that they are provided the right type of education and training.

Thirdly, there is a great need for infusing political consciousness and understanding among the masses. This can only be done through social education. Parliamentarians and legislators should go to their constituencies and explain to the electorate the work and activities of the legislatures and discuss with them the various problems facing the country.

Fourthly, civil servants who run the administration should receive the right type of training to equip them to discharge their duties in the changed set-up : They should be not only technically qualified but also honest, incorruptible and imbued with a spirit of service to the community.\*

Fifthly, the people's co-operation in schemes of community development should be evoked. There is great need for bringing about a psychological revolution in the attitudes of the people. This can be done by educating the people through radio, newspapers, lectures and public meetings. Community forums should be organised and people should be afforded opportunities of exchanging ideas and thoughts about various problems facing the country.

Sixthly, there is a great need for developing local self-governing institutions on sound lines. A Central Government is a travesty of democracy unless it is accompanied by a sound form of local self-government. This can only be achieved with the spread of mass education

Lastly, democracy in this country can succeed only if early steps are taken to eradicate poverty and reduce gross inequalities of wealth. Our Second Five Year Plan is an humble attempt in this direction. India is today embarking on one of the greatest experiments in socialist democracy. The Community Centres in the villages and towns are working as the spearheads of this movement for bringing in a silent social revolution and reinforcing the faith of the people in democratic peaceful planning.

---

\*In the Life Insurance Corporation deal Krishnamachari had to resign due to the principle of ministerial responsibility but the civil servants were also found guilty of gross negligence by Bose committee.



## Bibliography

- A. B. Lal*: The Indian Parliament.
- Sri Prakash*: Democracy and Parliamentary Government.  
(Mavalankar Memorial Lecture 1957) Harold Laski Society.  
Laski Institute Review, Ahmedabad (India) Vol I No I.
- Parliamentary (Harold Laski Institute of Political Science.  
Democracy— India.  
A Symposium (Ahmedabad)  
Parliamentary Democracy (Indian Bureau of Parliamentary  
Studies, New Delhi)
- Douglas*: We the Judges. (Tagore Law Lectures Eastern Law  
House Ltd., 1956).



## APPENDIX

### IMPORTANT SUPREME COURT CASES RELATING TO THE INTERPRETATION OF THE CONSTITUTION

The new Constitution of India came into force on January 26, 1950. Since then, several important provisions of the Constitution particularly those relating to fundamental rights (Articles 14, 15, 19, 21, 22 and 31) have come in for interpretation and judgment of the Supreme Court. For a proper understanding of the working of the Constitution, it is very necessary that we study these judgments, and consider their effect on the rights of the citizens.

We are, therefore, giving below, in brief, only a few more important decisions of the Supreme Court relating to the Articles of the Constitution mentioned above. Relevant cases have already been cited earlier in the book at proper places.

#### EQUALITY BEFORE THE LAW (ARTICLE 14)

##### 1. The State of West Bengal *vs.* Anwar Ali Sirkar. (1952 S. C. R. 284)

In this case, the fundamental right of equality before the law came up for consideration. The State of West Bengal had passed the West Bengal Special Courts Act to provide for a speedy trial of certain offences. The Act empowered the State Government to constitute special courts for the trial of certain offences and to prescribe a procedure which was different in several respects from that laid down in the Criminal Procedure Code. The respondent, Anwar Ali, who was convicted and sentenced to death by a Special Court, contended that the provisions of the West Bengal Special Court Act were unconstitutional and void inasmuch as they contravened Article 14 of the Constitution, which provides that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

The Supreme Court by a majority of six to one held that section 5(1) of the West Bengal Special Courts Act contravened Article 14 of the Constitution and was void inasmuch as the procedure laid down in the Act for the trial of offences by the special courts varied substantially from that prescribed for the trial of offences generally.

##### 2. Satish Chander Anand *vs.* the Union of India.

(1953 S. C. R. 655)

In this case, the question raised was whether the termination of the services of petitioner Satish Chandra by the Government of India infringed Articles 311, 14 and 16(1) of the Constitution. The Supreme Court held that the State could enter into contracts of temporary employment and impose special terms in each case, provided they were



not inconsistent with the Constitution, and those who chose to accept terms were bound by them. The Court held that the petitioner had no remedy as his was not a case of dismissal or removal from service nor of reduction in rank. There being no denial of equality of opportunity, the Court held that the petitioner had no remedy under Article 16 either.

3. **D. P. Joshi vs. The State of Madhya Bharat and another**  
(1955 S. C. R. 1215, also A. I. R. 1955 B. C. 334.)

This was a petition under Article 32 of the Constitution. The complaint of the petitioner was that the rules in force in the Mahatma Gandhi Memorial Medical College run by the State of Madhya Bharat discriminate in the matter of fees between students who are residents of Madhya Bharat and those who are not, and that the latter have to pay addition to the tuition fees and charges payable by all students a sum of Rs. 1,500 per annum as capitation fee, and that this is in contravention of Articles 14 and 15(1) of the Constitution. The Supreme Court dismissed the petition and the points of constitutional import which emerged from the majority judgment were:

(1) Residence and place of birth are two distinct conception with different connotations both in law and in fact, and when Article 15(1) prohibits discrimination based on the place of birth, it cannot be read as prohibiting discrimination based on residence.

(2) Domicile of a person means his permanent home and is sometimes used in the sense of residence.

(3) A classification made on a geographical basis would be eminently just and reasonable when it relates to education which is the concern primarily of the State.

4. **B. Venkataraman Vs. The State of Madras and another**  
(1951 S. C. 7318)

This was an application under Article 32 of the constitution complaining of the infringement of the petitioner's fundamental right to employment in the State Service of the first respondent and praying for writ of a certiorari and prohibition. The Supreme Court allowed the petition and the point of constitutional import decided was:

In view of Clause (4) of Article 16 of the Constitution the reservation of posts in Government service (in this case post of District Munsiff) in favour of any backward class of citizen cannot be regarded as unconstitutional. But the ineligibility of a Brahmin for any of the posts reserved for communities other than Harijans and Backward Hindus cannot be regarded as founded on justice. Such an exception is not sanctioned by clause (4) of Article 16 and it is an infringement of the fundamental right guaranteed to an individual citizen under Article 19 (1) and (2).



**Din Dayal Vs State**

( A. I. R. 1956 Allahabad 520 )

The conception of "Equality before the law" does not involve the idea of absolute equality among human beings, which is a physical impossibility. Equality before the law means that among equals the law should be equal and should be equally administered and that the like should be treated alike. The inhibition of Article 14 that the State shall not deny to any person equality before the law or the equal protection of the laws was designed to protect all persons against legislative discrimination amongst equals, and to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation.

A legislature empowered to make laws on a wide range of subjects must of necessity have the power of making special laws to attain particular objects and must for that purpose possess large power of distinguishing and classifying the persons or things to be brought under the operation of such laws, provided the basis of such classification has a just and reasonable relation to the object which the Legislature has in view.

If a legislation is discriminatory and discriminates one person or class of persons against other similarly situated and denies to the former the privileges that are enjoyed by the latter, it cannot but be regarded as hostile in the sense that it affects injuriously the interests of that person or class. Of course if one's interests are not at all affected by a particular piece of legislation, he may have no right to complain. But if it is established that the person complaining has been discriminated against as a result of legislation, and denied equal privileges with others occupying the same position, it is not incumbent upon him before he can claim relief on the basis of his Fundamental Rights to assert and prove that in making the law the Legislature was actuated by a hostile or inimical intention against a particular person or class.

The term "the State" as defined in Art. 12 includes the executive authority. Hence discrimination practised by and executive or administrative body or officer in carrying out an Act would seem to be a violation of the injunction under Article 14 as much as a legislative enactment which discriminates between different classes in an unconstitutional manner.

If the Legislature does not lay down or indicate any standard for the guidance of the Executive or of an Officer but confers absolute, naked and arbitrary powers on the Executive or upon the Officer, the validity of such an act will be open to challenge under Art. 14.



**Right to Freedom (Article 19)**

1. **Mohammed Yasin V/s. The Town Area Committee, Jalalabad.**  
(1952) S. C. R. 572

Under Article 19 (1) (g) of the Constitution, a citizen has the right to carry on any occupation, trade or business and the only restriction on this unfettered right is the authority of the State to make a law relating to the carrying on of such occupation, trade or business as is mentioned in Clause 6 of that Article. In the above case the question was raised whether the imposition of a licence fee on a business without the authority of law was an infringement of the fundamental right guaranteed under the Constitution. The Supreme Court held that such imposition was illegal and void. Further, it observed that if a licence fee imposed on an occupation could not be justified on the basis of any valid law, there could be no question of its reasonableness, for an illegal impost was at all times an unreasonable restriction and must necessarily infringe the fundamental right of the citizen.

2. **Harnam Singh and others V/s. Regional Transport Authority, Calcutta and others.**  
(1954 S. C. R. 371-78)

This case came up before the Supreme Court in the form of a civil appeal, relating to the issuing of permits to the small taxis and fixing of lower tariffs for them. The point at issue was whether this infringed the fundamental right of existing holders to carry on occupation or to equal protection of the laws guaranteed by Articles 19 and 14 of the Constitution. The Court held: (i) the introduction of small taxis and the fixing of a lower tariff for them was based on a rational classification and there was no contravention of Article 19 of the Constitution; (ii) as the permit-holders of bigger taxis were not prevented from carrying on their occupation and plying their taxis, there was no infringement of Article 19 (1) (g) of the Constitution.

*Equality before Law.* Justice M. C. Mahajan who delivered the judgment observed: "It has been repeatedly pointed out by this Court that in construing Article 14, the Courts should not adopt a doctrinaire approach which might well choke all beneficial legislation and that legislation which is based on a rational classification is permissible. A law applying to a class is constitutional if there is sufficient basis or reason for it. In other words, a statutory discrimination cannot be set aside as the denial of equal protection of the laws, if any statement of facts may reasonably conceive to justify it".

*Freedom of Occupation.* Dealing with the contention that the introduction of small taxis would bring about a total stoppage of the existing motor taxi can business of large taxi-owner in a commercial sense and would thus be an infringement of the fundamental right guaranteed under Article 19 (1) (g), Justice Mahajan observed: Article



19 (1) (g) declares that all citizens have the right to practise any profession, carry on any occupation, trade or business. Nobody has denied to the appellants the right to carry on their own occupation and to ply their taxis. This Article does not guarantee a monopoly to a particular individual or association to carry on any occupation and if other persons are also allowed the right to carry on the same occupation and an element of competition is introduced in the business, that does not, in the absence of any bad faith on the part of the authorities, amount to a violation of the fundamental right guaranteed under Article 19 (1) (g) of the Constitution."

3. **The State of West Bengal Vs. Subodh Gopal Bose and others.**  
(1954 S. C. R. 94)

In this case which related to acquisition of property by the State for a public purpose, the Chief Justice Patanjali Sastri held that the word "hold" in Article 19(1) (g) means "own" and this clause gives the citizens the abstract right to acquire, own and dispose of property. The Chief Justice further held that this Article does not deal with the concrete rights of the citizens of India in respect of property so acquired and owned by him. These concrete rights, he observed, were dealt with in Article 31 of the Constitution which protects the citizens' right of property by defining the limitations on the power of the State to take away property without the consent of the owner. Clauses (1) and (2) of Article 31 are not mutually exclusive in scope and content, but should be read with and understood as dealing with the same subject.

According to Justice S. R. Das, the co-relation between Article 19(1) (f) and Article 31 is that if a person loses his property by reason of its having been compulsorily acquired under Article 31, he loses his right to hold the property and cannot complain that his fundamental right under Article 19(1) has been infringed. The rights enumerated in Article 19(1) subsist while the citizen has the legal capacity to exercise them. Elaborating the idea further, Justice Das observed that the true scope and effect of Clauses (1) and (2) of Article 31 is that Clause (1) deals with the deprivation of property in exercise of 'police power' and enunciates the restrictions which the framers of the Indian Constitution thought necessary or sufficient to be placed on the exercise of that power and that Clause (2) deals with the exercise of the power. These limitations constitute the citizens' fundamental right against the State's power of *eminent domain*.

4. **Dwarka Das Srinivasa of Bombay vs. The Sholapur Weaving and Spinning Co. Ltd. and Others.**

(1954 S. C. 119)

The above case reopened the discussion on Article 31 (2) of the Constitution. In this case the Supreme Court reversed an earlier decision of the Bombay High Court. The main issues for the con-



consideration of the Court were whether the provisions of the ordinance under the Bombay Government had taken over the management of the Sholapur Mills contravened the provisions of Article 31 (2), and whether the ordinance as a whole or any of its provisions infringed Article 14 or Article 19 of the Constitution. The contention of the Attorney-General that in promulgating the ordinance, the Government had merely taken over the superintendence of the affairs of the company was rejected. In Justice Mahajan's view, with whom the other judges concurred, the impugned act has "overstepped the limits of legitimate social control legislation and has infringed the fundamental rights of the company guaranteed under Article 31 (2) of the Constitution."

In the view of Justice S. R. Das the Act has "far overstepped the limits of 'police power' and is in substance nothing short of expropriation by way of the exercise of the power of 'eminent domain' and as the law has not provided for any compensation, it must be held to offend the provision of Article 31(2)."

*In view of the above decision of the Supreme Court, the 4th amendment in the Constitution was passed in 1955.*

#### 5. **The State of U. P. Vs. the Employers' Association, 1954.**

This case arose out of an appeal challenging the validity of the Minimum Wages Act, 1948, which provided for fixing minimum rates of wages in certain employments. The petitioners had contended that the Minimum Wages Act put unreasonable restrictions upon the rights of the employer in the sense that he was prevented from carrying on trade or business unless he was prepared to pay minimum wages. The employers' rights were also restricted, inasmuch as he was disabled from working in any trade or industry on the terms agreed to between him and his employees. This, the petitioner contended, infringed their fundamental right guaranteed under Article 19 (1) (g).

The unanimous judgment delivered by Justice B. K. Mukherjee said that though the restrictions imposed by the Act interfered to some extent with the freedom of trade or business guaranteed under Article 19 (1) (g), they were "reasonable, and, being imposed in the interest of the general public." They are protected by the terms of clause (7) of Article 19 of the Constitution.

The Judgment further observed : "It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency is conducive to the general interest of the public. This is one of the directive principles of State policy embodied in Article 43 of our Constitution. If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot



in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness, are willing to work on lesser wages."

### FREEDOM OF PERSON (ARTICLE 21)

**Shrimati Vidya Verma Through R. V. S. Mani Vs. Dr. Shiv Narain Verma.**

(1955 II S. C. R. 983, A, I. R. 1956 S. C. 108)

This was a petition under Article 32 of the Constitution for a writ in the nature of habeas corpus. Dismissing the petition, the Supreme Court decided the following point of constitutional import:

No question of infringement of any fundamental right under Article 21 arises where the detention complained of is by a private person and not by State or under the authority orders of a State, and the Supreme Court will not, therefore, entertain in such a case an application for a writ of habeas corpus, under Article 32 of the Constitution.

### FREEDOM OF RELIGION (ARTICLE 25)

**Rati Lal Panachand Gandhi Vs. The State of Bombay and others.**

(Supreme Court Reports Vol. V, Part X, Nov, Dec. 1955)

This case was decided by the Supreme Court in appeal against the judgment of the Bombay High Court. The appellant, the manager of a Jain public temple, had taken objection to certain sections of the Bombay Public Trust Act, 1950, relating to the appointment of the Charity Commissioner as a trustee of any public trust by the court without any reservation in regard to religious institutions like temples and maths.

The Supreme Court which reversed the judgment of the High Court held that a religious sect or denomination has the undoubted right guaranteed by the Constitution to manage its own affairs in matters of religion and this includes the right to spend the income of the trust for religious purposes and for the objects indicated by the founder of the trust or established by usage. The Court further ruled that to divert the trust property or funds for purposes which the Charity Commissioner or the Court considers expedient or proper, although the original object of the founder can still be carried out, is an unwarrantable encroachment on the freedom of religious institutions in regard to management of their religious affairs. Therefore, clause (3) of Section 55 of the Bombay Public Trust Act which contained the offending provision was declared *ultra vires* of the Constitution.



The important point that arose out of the judgment was that the right of management vesting in a religious body was a fundamental right which no legislation could take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but it is the religious denomination itself which has been given the right to administer its property in accordance with any law which the State may validly impose. The law which takes away the right of administration altogether from the religious denomination and vests it in any other secular authority amounts to violation of Article 26 (d) of the Constitution.

## RIGHT TO PROPERTY (ARTICLE 31)

**Rai Sahib Ram Jawaya Kapur and others Vs. The State of Punjab.**

(A. I. R. 1955 S. C. 549)

This case arose out of a petition by a group of printers and publishers of school text books in the Punjab against the State Government, which had taken over the entire work of preparing, publishing and distributing text books to schools exclusively under its own control. Dealing with the question whether this contravened the publishers' fundamental right of freedom to carry on their own trade, the Supreme Court held that whether the action of the Government was good or bad, it did not amount to any violation of this right. The mere chance or prospect of having particular customers cannot be said to be a right to property or to any interest or undertaking within the meaning of Article 31 (2).

**The State of Bombay Vs. Ali Gulshan**

(1955 II S. C. R. 867, also A. I. R. 1955 S. C. 810)

Two cases under Article 31 arose out of requisitioning of private premises by the State Government of Bombay under the provisions of the above Act. In one case the premises were requisitioned for housing an officer of the State Road Transport Corporation and in the other to house a member of the staff of a foreign consulate. The petitioners contended that in none of the two cases the requisition was for a bona fide public purpose. The Supreme Court upheld the action of the State Government. While acknowledging that it was difficult to define precisely the expression public purpose, the Court held that the phrase includes a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. The Court, however, felt that in each case facts and circumstances will require to be closely examined to determine whether a 'public purpose' has been established.



**Thakur Amar Singh Ji Vs. State of Rajasthan.**

(1955 S. C. R. 303 or A. I. R. 1955 S. C. 5 1)

A number of petitions were filed under Article 32 of the Constitution challenging the validity of the Rajasthan Land Reforms and Resumption of Jagir's Act, 1952. The Supreme Court dismissed the petitions and held that the impugned Act was valid. It held that objections raised as to the validity of the Act on the ground that it did not provide for payment of compensation, that there was no public purpose involved in the resumption and that therefore it contravenes Article 31 (2) or that the provisions of the Act offend Article 14, are barred by the provisions of Article 31-A of the Constitution. Even apart from 31-A, the impugned Act must be held to be supported by public purpose and is not an contravention of Article 31 (2). Nor is there a contravention of Article 14, as under the Act all jagirs are liable to be resumed, no power having been conferred on the Government to grant exemption.

**The State of Bihar Vs. Maharaja Sir Kameshwar Singh of Darbhanga.**

(1952 S. C. R. 889)

In this case the validity of the Zamindari Abolition Acts in Bihar, Madhya Pradesh and Uttar Pradesh came up for decision before the Supreme Court. Important points of constitutional consequence were decided in the case. It was, for example, held that expropriation of private property can be lawful only, and can be acquired for public purpose if due provision is made for the payment of compensation. It is not, however, necessary to state in express terms in the statute itself the precise purpose for which the property is being taken, provided from the whole tenor and intent of the Act it could be gathered that the property was being acquired either for the purpose of the State or for the purpose of the public and that the intention was to benefit the community at large. The Legislature is the best judge of what is good for the community. All the three Zamindari Abolition Acts except sections 4 (b) and 23 (f) of the Bihar Act, were, therefore, valid.

**The State of West Bengal vs. Mrs. Bela Banerjee and others.**

(1954) S. C. R. 558

While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner or the property appropriated, such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of. Within the limits of this basic requirement of full indemnification of the expropriated owner the Constitution allows free play to the legislative judgment as to what principles should guide the determination of the amount payable.



The fixing of an anterior date for the ascertainment of value may not, in certain circumstances, be a violation of the constitutional requirements as for instance in a case when the proposed scheme of acquisition becomes known before it is launched and prices rise sharply in anticipation of the benefits to be derived under it. But the fixing of an anterior date, which might have no relation to the value of the land when it is acquired, may be, many years later, cannot but be regarded as arbitrary.

**Writ of Certiorari—T. C. Basappa vs. T. Nagappa and another.**

(Supreme court Reports Part vs. January 1955)

This case arose out of an appeal from the judgment of the Mysore High Court. In deciding the case, the Supreme Court of India enunciated the general principles governing the issue of a writ of certiorari. The Court held that a writ of certiorari can be availed of only to remove or adjudicate upon the validity of judicial acts, which expression includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions but does not include purely ministerial acts. In granting a writ of certiorari the superior court does not exercise the right of an appellate tribunal, the control exercised through it being merely in a supervisory capacity. It does not review the evidence upon which the determination of the inferior court is based, nor does it substitute its own views for those of the inferior tribunal.

**Miscellaneous Cases Relating to Acts, ordinances or Orders of Government.**

(Constitution First Amendment Act 1951)

This Act was passed by Parliament with a view to removing the zamindari abolition measures from judicial scrutiny and also to put an end to unnecessary litigation on such measures. The zamindars, whose interests were adversely affected, moved the Supreme Court under Article 82 of the Constitution impugning the Act itself as unconstitutional and void. The Supreme Court held that the Constitution (First Amendment) 1951, which had inter alia inserted Articles 31-B in the Constitution was not ultra vires or unconstitutional. It also held that the provisional Parliament was competent to exercise the power of amending the Constitution under Article 368, although it consisted of only one house at that time instead of two as contemplated by the Constitution.

A significant point that came up for consideration in this case was whether it was open to the Supreme Court to enquire into the question of "public purpose" vis-a-vis the abolition of the zamindaris. Although opinion was divided, Justice Mahajan, in his majority judgment, held that the Supreme Court was fully competent to go into this question. "It is obvious", he observed, "that concentration of big blocks of land in the hands of a few individuals is contrary to the



principles on which the Constitution of India is based." The purpose of the acquisition contemplated by the impugned Act," he further observed, "is to do away with the concentration of big blocks of land and means of production in the hands of a few individuals and to distribute the ownership and control of material resources which come in the hands of the State so as to subserve the common good as best as possible."

It will be seen that the learned judge turned to the Directive Principles of State Policy to find justification for the great agrarian reform contemplated in the zamindari abolition measures. These principles are not enforceable by any court but they are, nevertheless, fundamental in the governance of the country and the State is duty bound to apply them in making laws. The phrase "public purpose," Justice Mahajan pointed out, had to be construed according to the spirit of the times in which a particular legislative measure was enacted, and the legislature rather than the Court was the best judge of what was for the public good.

### **Bombay Cases relating to Admission in Anglo-Indian Schools**

In this case Article 29 (2), guaranteeing the right of admission into State-managed educational institutions without any distinction of religion, race, caste or language, etc., and Article 337 making special provisions with respect to educational grants for the benefit of the Anglo-Indian community came in for interpretation, Bombay Government had issued a circular banning admission of non-Anglo-Indians or pupils of Asian descent to Anglo-Indian schools teaching through the medium of English. The Supreme Court held that the order was bad and it contravened the above-mentioned Articles of the Constitution.

On the facts of the case, two questions arose for consideration: (1) the right of pupils who were not Anglo-Indians or who were of Asian descent to be admitted to Barnes High School which was a recognised Anglo-Indian School imparting education through the medium of English; and (2) the right of this School to admit non-Anglo-Indian pupils and pupils of Asian descent.

The judgment said that the arguments advanced by the Attorney General overlooked the distinction between the object or motive underlying the impugned order and the mode and manner adopted therein achieving the object. "The object or motive attributed by the learned Attorney-General to the impugned order is undoubtedly a laudable one but its validity has to be judged by the method of its operation and its effect on the fundamental right guaranteed by Article 29.(2)."

Justice Das said: "The laudable object of the impugned order does not obviate the prohibition of Article 29(2) because the effect of the order involves infringement of this fundamental right, and that effect is brought about by denying admission only on ground of language."



On the right pertaining to the school itself the judgment said : "Where a minority like the Anglo-India community which is based, inter alia, on religion and language, has the fundamental right to conserve its language, script and culture under Article 29(1) and has the right to establish and administer educational institutions of their choice under Article 30(1), surely then there must be implicit in such fundamental right, the right to impart instruction in their own institutions to the children of their own community in their own language. To hold otherwise will be deprive Article 29(1) and Article 30(1) of the greater part of their contents."

*U. P. Road Transport Act of 1951 relating to Nationalisation of Road Transport*

In 1951, the U. P. Government passed an Act seeking to give the State Government the exclusive right to operate road transport services within its territory. The Supreme Court by a unanimous judgment held the Act to be ultra vires of the Constitution as it infringed the fundamental rights guaranteed under Article 19(1) (g) and Article 31(2) of the Constitution.

In the judgment Justice B. K. Mukherjee observed : "Hundreds of citizens are earning their livelihood by carrying on this business on various routes within the State of Uttar Pradesh. Although they carry on the business only with the aid of permits, which are granted to them by the authorities under the Motor Vehicles Act, no compensation has been allowed to them under the statute. It goes without saying that as a result of the Act they will all be deprived of the means of supporting themselves and their families and they will be left with their buses which will be of no further use to them and which they may not be able to dispose of easily or at a reasonable price."

The judgment, however, said that if the present statute was passed after the coming into force of the Constitution First Amendment Act 1951, namely, that a State could create a monopoly in its own favour in respect of any trade or business, "the question of reasonableness would not have arisen at all and the appellant's case on this point, at any rate, would have been unarguable."

The amendment of the Constitution, which came later, the judgment said, "cannot be invoked to validate an earlier legislation which must be regarded as unconstitutional when it was passed."

**Inter-State Sales Tax**

**The Bengal Immunity Company Ltd. Vs. The State of Bihar and others.**

(1955 II S. C. R. 603, also AIR 1955 S C 661)

In this case the Supreme Court by a majority decision on September 6, 1955 allowed the appeal filed by the Bengal Immunity Co. Ltd. and directed the State of Bihar to abstain from imposing sales



tax on dealers outside the State till Parliament by law lifted the restrictions on the imposition of such taxes prescribed by Article 286 of the Constitution. In doing so the Court reviewed one of its own earlier decisions given in a Bombay case. It had then held that Article 286 (1)(A) read with the explanation thereto and construed in the light of Articles 301 and 304 prohibited the taxation of sales or purchases involving inter-State elements by all States except the State in which the delivery of the goods was so made as to convert such inter-State transactions into intra-State transactions and to take them out of the operation of clause (2) of that Article.

The majority judgment which was delivered by Justice S. R. Das held that the earlier decision of the Court in the Bombay appeal was open to review and that the Court was entitled to re-examine Article 286 in order to ascertain its true meaning in the light of the present appeal. Justice Das observed: "We are definitely of opinion that, until Parliament by law made in exercise of the power vested in it by Clause (2) provides otherwise, no State can impose or authorise the imposition of any tax on sales or purchase of goods when such sales or purchases take place in the course of inter-State trade or commerce and the majority decision in the State of Bombay Vs. the United Motors (India) Ltd. in so far as it decides to the contrary cannot be accepted as well founded on principle or authority."

*Preventive Detention case. A. K. Gopalan V. The State of Madras (1950) S. C. J. 418.* The Preventive Detention Act 4 of 1950 passed by Parliament directed the detention of a person if his activities were prejudicial to the security of the state. This power of detention could be exercised by the District Magistrate or a subordinate officer. Section 14 of the Act prevented the detained person from disclosing to any one the contents of any communication to him of the grounds of his detention. The detenu A. K. Gopalan moved the Supreme Court under Art 32, and challenged the validity of Preventive Detention. The Court held by a majority the Detention Act valid but unanimously held section 14 *ultra vires*. The Court also held that due process of law did not find place in Art 21. In the case Art 19 did not apply, only Art 22 applied.

---

Art 19 only safeguarded the right of citizens who were free and not in the case of those who suffered total deprivation of freedom. The latter is governed by 22 (3) (4) and (5).



